

**IN THE COURT OF CIVIL JUDGE-06, (CENTRAL),
TIS HAZARI COURTS, DELHI**

DATE OF INSTITUTION: 11.09.2015

CIS NO. : 600456/2016

CNR NO. : DLCT03-003212-2015

DATE OF DECISION: 29.06.2020

PRESIDING OFFICER: Mr. RUPINDER SINGH DHIMAN

Nadimul Haq,

S/o Sh. Raisul Haq,
R/o H.No. 711, Haveli Azam Khan Bazar,
Chitli Qabar, Jama Masjid,
Delhi – 110006.

.....Plaintiff

Versus

1. **Sh. Raisul Haq, (abated vide order dated 21.07.2016)**
S/o Late Sh. Shizaul Haq @ ShirajulHaq,
2. **Smt. Roshanara Begum,** W/o Late Sh. Raisul Haq,
3. **Sh. Shadbul Haq,** S/o Late Sh. RaisulHaq,
4. **Sh. Zamirul Haq,** S/o Late Sh. Shizaul Haq,
5. **Sh. Anwar Hussain,** S/o Late Sh. Ahmad Hussain,

All respondents are residents of
H.No. 711, Haveli Azam Khan Bazar,
Chitli Qabar, Jama Masjid,
Delhi – 110006.

.....Defendants

Argued by:

(a) Sh. Anil Kumar Singh, Legal aid counsel for plaintiff.

Note: Defendants no. 2 to 5 are already proceeded against exparte.

SUIT FOR PERMANENT INJUNCTION

JUDGMENT:

1. Present suit for permanent injunction has been filed by the plaintiff with the averments that

“Plaintiff is presently residing at H.No. 711, Haveli Azam Khan Bazar, Chitli Qabar, Jama Masjid, Delhi – 110006 (hereinafter referred to as suit property). Initially the mother of the defendant no.1 (and grandmother of the plaintiff) was living in the suit property. The suit property belongs to the Slum and JJ Department. The damages/ user charges for the suit property had never been paid to the Slum and JJ Department despite demand notices. Defendants wish to forcibly dispossess him from the suit property and unilaterally alienate the suit property to a third party. The plaintiff is the son of the defendant no.1 Shri Raisul Haq and Late Smt. Naseema Begum (who expired in 2003). Plaintiff has two other siblings i.e. Sh. Shadbul Haq, who is defendant no.3 herein and Smt. Faheema Begum (who was married in the year 1995 and is staying at her matrimonial home ever since then. Soon after the death of the plaintiff’s mother, the defendant no.1 remarried defendant no.2 Smt. Roshnara Begum. After the said marriage, relations soured between her and plaintiff. At the behest and instigation of the defendant no.2 (his step mother), his father (defendant no.1) is forcing the plaintiff and his brother (defendant no 3) to vacate the suit property in which they are presently residing in. The hostile behavior of the defendant nos. 1 and 2 towards him and his brother had compelled him to file a suit against the defendant no.1 and 2. However, the same was withdrawn as the defendant nos. 1 and 2 had given an assurance that they shall not harass the plaintiff and his brother any more. Since it was a family dispute, the plaintiff had withdrawn the suit later. However, the intentions of the defendant nos. 1 and 2 have again turned inimical. The plaintiff is residing on the second floor of the suit property in the capacity of a co sharer/ co occupier and hence is entitled to live in the suit property. Defendants are neither the allottees nor the owners of the suit property. Compelled by circumstances, Plaintiff also lodged police complaints against the defendant nos. 1 and 2. However, these police complaints failed to yield any concrete, tangible and beneficial results for the plaintiff. Plaintiff being co-sharer/ co occupier of the suit property, is entitled to live in the suit property without fear of dispossession. Further, defendant nos. 4 and 5, residing on the ground floor of the suit property, are also trying to alienate the suit property to a third party. They, however, cannot sell off the same as they are neither the owners nor allottees of the suit property. Left with no other efficacious remedy, plaintiff has been

constrained to file the present suit seeking the reliefs of permanent injunction, thereby restraining the defendants from forcibly dispossessing him from the suit property and also restraining the defendants from creating any third party interest in the suit property.”

2. On notice, defendants no. 1 to 4 filed written statement wherein they denied the averments of the plaintiff. However, no written statement was filed on behalf of defendant no.5, despite opportunities being given and he was proceeded against exparte.

3. In the joint written statement filed by the defendant nos. 1 and 2, the suit has been assailed on the ground that it was an abuse of the judicial process and had been filed without a legally tenable cause of action. It is further contended by these defendants that the plaintiff had no locus standi to file the present suit as the plaintiff had no right, title or interest in the suit property. The defendant nos. 1 and 2 submit that the plaintiff had filed the present suit just to harass them and hence, the suit warranted in limine dismissal. The defendant nos.1 and 2 have also lampooned the present suit on the ground that the same was defective for mis joinder of parties as defendant nos. 4 and 5 had no right, title or interest in the suit property and since they were also not in possession of the suit property. The defendant nos. 1 and 2 also contend that the suit warranted an in limine dismissal as the plaintiff had concealed several material facts from the court and distorted many others just to procure a favourable verdict. They state that this suit was a mere counter blast to the suit of mandatory injunction filed by the defendant no.1 against the plaintiff. The defendant nos.1 and 2 have also in clear and unambiguous terms denied the allegations of the plaintiff that they had extended threats to the plaintiff and made attempts to falsely implicate the plaintiff in criminal cases. They admit that the plaintiff was residing in one room on the second floor of the suit property but deny that plaintiff had any proprietary right in the suit property. They state that the suit property belongs to the DDA and the same is now in the name of the defendant no.1 and hence, plaintiff could not have claimed a right over the same. They state that they had right to deal with the suit property in any manner that they like.

4. In the written statement filed by defendant no.3, similar grounds of challenge have been taken by him. The defendant no.3 also claims himself to be a co sharer/ co owner of the suit property.

5. In the written statement filed by the defendant no.4, the defendant no.4 states that he had no concern or relation with the present dispute as the same is between the plaintiff and his parents. He however, stated that he had been living in the suit property ever since 1980s and his possession had been uninterrupted and peaceful till date. He stated that the present suit had been filed without a legally tenable cause of action. He stated that the plaintiff had no right, title or interest in the suit property. The defendant no.4 denied all allegations of obstructing or interfering with the possession of the plaintiff or having adopted an intimidatory attitude towards him. He also denied having struck up a deal to sell the suit property to a third party.

6. Before the case could proceed further, defendant no 1 expired. However, no application for substitution of Legal representatives was moved on behalf of the plaintiff. Further, relief of Permanent injunction has been sought on the ground that efforts were being made by defendants to forcibly dispossess the plaintiff from suit property. Allegations against defendants were thus personal in nature. **Therefore, suit against defendant no 1 stood abated vide order dated 21.07.2016.**

7. On the basis of pleadings of the parties, following issues were framed on 20.12.2016:

Preliminary issues.

- i. Whether the plaintiff had no locus standi to file the present suit? OPD
- ii. Whether the plaint was liable to be rejected as it did not disclose any cause of action? OPD
- iii. Whether the plaint was liable to be rejected for non-compliance with the requirements of Order VI Rule 15 CPC? OPD
- iv. Whether the suit was liable to be dismissed on ground of mis-joinder of parties, vis-a-vis defendants no. 4 and 5? OPD.

Other issues.

- v. Whether the plaintiff was a co-owner in the suit property? OPP
- vi. Whether the defendant no. 1 and 2 were the owners of the suit property to the exclusive of plaintiff? OPD
- vii. Whether the plaintiff was entitled to a decree of permanent injunction restraining all the defendants from forcibly dispossessing the plaintiff from the suit property? OPP
- viii. Whether the plaintiff was entitled to a decree of permanent injunction restraining all the defendants from creating third party interest or otherwise alienating the suit property? OPP

8. Matter was then fixed for plaintiff's evidence. Plaintiff examined himself as PW 1. He tendered his evidence by way of affidavit Ex. PW-1/A, wherein he reiterated the averments made in the plaint. Same are not repeated herein for the sake of brevity. In addition, he relied upon the following documents:

- a) Ex PW-1/1 (OSR) : Police complaint dated 02.02.2015
- b) Ex PW-1/2 (OSR) : Police complaint dated 02.06.2015
- c) Ex PW-1/3 : Police complaint dated 14.07.2015 de-exhibited being photocopy and marked as Mark B.
- d) Ex PW-1/4 : Police complaint dated 22.07.2015 de-exhibited being photocopy and marked as Mark C.
- e) Ex PW-1/5A to Ex. PW-1/D : Photographs of plaintiff in suit property.
- f) Ex PW-1/6 (OSR) : Aadhar Card.
- g) Ex PW-1/7 (OSR) : Voter ID Card.
- h) Ex PW-1/8 : Ration Card of defendant no.1 de-exhibited being photocopy and marked as Mark A.

9. None of the defendants appeared to cross examine the plaintiff despite opportunity being given. Plaintiff closed his evidence on 06.06.2017. Further for continuous non-appearance, defendants were proceeded against exparte. Thereafter, matter was fixed for final arguments.

10. I have heard the arguments and perused the record. My issue wise findings are as under:

ISSUES NO I TO IV

11. Issues no I to IV are connected and based upon the preliminary objections taken by the defendants. Hence, I proceed to decide the same together.

The onus to prove these issues was on the defendants. Defendants did not lead any evidence on the said issues. Therefore, in the absence of any evidence being led by defendants, no concrete findings can be given on these issues.

The issues thus remain unproved.

ISSUE NO V

Whether the plaintiff was a co-owner in the suit property? OPP

12. The onus to prove this issue was on the plaintiff.

Plaintiff has claimed himself to be a co-sharer in the suit property. However, no averment has been made by the plaintiff regarding the basis of his claim. Pleadings form the backbone of the litigation. They should be carefully drafted. In case pleadings are vague and confusing, then party who relies upon such pleadings cannot take benefit of those pleadings. This case highlights the said preposition of law.

13. Plaintiff has deposed that he is co-owner/co-sharer in the suit property. Perusal of the record reveals that the plaintiff has not filed any title documents to substantiate his claims. The plaintiff has filed copies of his AADHAR Card (Ex PW 1/6), voter ID Card (Ex PW 1/7) and Ration Card (Mark A) etc. to assert his proprietary title. It is a well settled legal proposition that these documents do not establish title over a property. They merely establish or hint towards the factum of possession of a property by a party. The plaintiff cannot thus claim title over the suit property on the basis of these documents without filing any independent title documents.

14. Further, in the plaint, I find that plaintiffs had asserted various facts, which were general in nature and often contradictory. Those facts were also bereft of specific details. Those details were relevant, so that I could believe the case of plaintiffs to be probable. In

the plaint in paragraph 24, it has been asserted that the suit property belongs to Slum and JJ Department. Further it has been asserted that despite notices being given, no damages were ever paid by the occupants. Further, he has deposed that defendants are neither the owners nor allottees of the suit property. On the other hand, Plaintiff has also pleaded that he is co-owner/ co-sharer in the suit property along with the defendants. But if defendants have no rights in the suit property, who are the co-sharers along with the plaintiff? The entire plaint is riddled with inconsistencies and vague pleadings. Further, no particulars have been mentioned as to how plaintiff acquired these rights.

15. While no cross examination has been done by the defendants and no evidence in rebuttal has been led; plaintiff's case must stand on his own legs. He cannot rely on the discrepancies in defendant's case to establish his co-ownership over the suit property. This is especially so when the entire plaint is vague and contradictory with respect to the title of the suit property. The same contradictory averments have been repeated in the affidavit of evidence which is mere reproduction of the plaint. Thus, the plaintiff has failed to lead any cogent evidence; oral as well as documentary, to prove his co-ownership in the suit property.

Hence, this issue is decided against the plaintiff.

ISSUE NO VI

Whether the defendant no. 1 and 2 were the owners of the suit property to the exclusive of plaintiff? OPD

16. The onus to prove this issue was on defendants no 1 and 2. Defendant no 1 expired during the pendency the present suit and suit against him stood abated on **21.07.2016 as no application for impleadment of his legal representatives was moved on behalf of plaintiff within the statutory period.** No evidence was led on behalf of defendant no 2.

In the joint written statement filed by defendant no 1 and 2, it has been pleaded in paragraph 7 that the suit property belongs to DDA and presently is standing in the name of defendant no.1. It has been further averred that the defendant no.1 is the owner in possession of first and second floor of the suit property. However, no evidence was

tendered on behalf of the defendants. Further, no documents were filed along with the written statement to support the above assertions of ownership. In the absence of evidence being led, any concrete finding on the issue cannot be given as suit for injunction simplicitor only has been sought by the plaintiff.

The issue thus remains unproved.

ISSUE NO VII and VIII

Whether the plaintiff was entitled to a decree of permanent injunction restraining all the defendants from forcibly dispossessing the plaintiff from the suit property? OPP

and

Whether the plaintiff was entitled to a decree of permanent injunction restraining all the defendants from creating third party interest or otherwise alienating the suit property? OPP

17. The onus to prove these issues was on the plaintiff. In order to be entitled for the relief of permanent injunction, plaintiff must show:

- a) Legal right in the suit property **and**
- b) Injunction is the appropriate remedy

With respect to legal right in the suit property, it has been held while deciding **issue no V**, that the plaintiff has failed to establish co-ownership in the suit property. While this in itself does not imply that plaintiff has no legal interest in the suit property; plaintiff's case, however, also suffers from vague and contradictory pleadings which are bereft of specific details.

18. Plaintiff has deposed on oath that he is residing in the suit property. This statement has gone unrebutted. Further, in the joint written statement filed by defendant no 1 and 2, it is admitted that the plaintiff is residing in one room on the second floor of the suit property. Thus, Plaintiff's possession only of one room in the suit property is admitted. **But possession of an immovable property, by itself does not give right to the occupant to claim that property.** This is more so when plaintiff has not averred the basis of the said possession. On the one hand, Plaintiff pleads that the suit property belongs to Slum & JJ department and on the other hand, claims himself to be co-owner

without giving necessary particulars. Defendants no 1 and 2 have categorically denied that plaintiff has any proprietary right in the suit property. In these circumstances, it becomes essential to consider whether suit for injunction simplicitor is maintainable or not.

19. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. The same have been lucidly discussed in the case “**Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors**” 2008 (4) SCC 594. I may refer to them briefly.

- i) *Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.*
- ii) *Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession cannot seek the relief of injunction simpliciter, without claiming the relief of possession.*
- iii) *Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction. I may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that*

defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

20. Now, in the present suit, defendants no 1 and 2 have un-ambiguously denied the title of the plaintiff in the suit property. Further, as discussed in issue no V, plaintiff has failed to establish any co-ownership interest. **In these circumstances, merely on the basis of possession, simplicitor suit for injunction would not be maintainable.**

21. Even otherwise, if for the sake of arguments, it is admitted that plaintiff has legal right in the suit property, injunction simplicitor would not be appropriate remedy in the present case. Plaintiff has deposed that originally suit property was under the possession of her grandmother and from her, possession (*not ownership*) devolved on defendant no 1 (his father). Thus, plaintiff's interest, if any, flows through defendant no 1 (his father). Now that defendant no 1 has expired, plaintiff, along with his brother (defendant no 3) and sister (Smt. Fahima Begum) and defendant no 2 (defendant no 1's wife) are heirs of defendant no 1 under the Islamic Law. **Without establishing title and seeking partition, injunction simplicitor cannot be granted in light of judgment of the Hon'ble Supreme Court in Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors 2008 (4) SCC 594.**

22. Therefore, plaintiff is not entitled to the relief of permanent injunction as he fails to show legal right in the suit property and that injunction would be an appropriate remedy in the present case.

Accordingly, issues no VII and VIII are decided against the plaintiff.

RELIEF

23. In view of aforesaid findings and observations, suit of the plaintiff stands dismissed. In view of peculiar facts of the present case, parties are directed to bear their own costs.

24. Decree sheet be prepared accordingly.

RUPINDER SINGH DHIMAN Digitally signed by RUPINDER SINGH DHIMAN
Date: 2020.06.29 17:01:58 +05'30'

RUPINDER SINGH DHIMAN
Civil Judge 06 (Central)/THC
Delhi/29.06.2020

**IN THE COURT OF SH. RUPINDER SINGH DHIMAN, CIVIL JUDGE -06,
CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI.**

**CS SCJ No. 456/2016
Nadimul Haq
Vs.
Raisul Haq**

29.06.2020

At 4.00pm

Present: **Sh. Anil Kumar Singh**, LAC for plaintiff (through videoconferencing).

**Suit against defendant no.1 already stands abated vide order dated
21.07.2016.**

**Defendants no.2 and 4 already proceeded against exparte vide order dated
15.02.2018.**

**Defendant no.3 already proceeded against exparte vide order dated
23.10.2018.**

**Defendant no.5 already proceeded against exparte vide order dated
29.03.2018.**

Vide separate order of even date, suit of the plaintiff stands dismissed. Parties are directed to bear their own costs. Decree sheet be prepared accordingly.

File be consigned to record room after due compliance.

**RUPINDER SINGH
DHIMAN**

**(Rupinder Singh Dhiman)
Civil Judge -06 (Central)/THC**

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SINGH DHIMAN
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