

Vinod Verma vs Arun Patel & Ors on 10 January, 2020

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM (M) 7/2020 & CM APPL. 281/2020

VINOD VERMA

Through:

Mr. Ankur
(M:9811096163)

..... Petitioner
Bhasin, Advocate.

versus

ARUN PATEL & ORS.

Through:

..... Respondents
Mr. Anirudh Sharma, Advocate for R-
1. (M:9999080715)
Mr. Tushar Sannu, ASC for Nr.DMC.
(M:9911991166)

CORAM:

JUSTICE PRATHIBA M. SINGH
ORDER

% 10.01.2020

1. This is the second round of litigation before this Court, between the parties. The present petition arises out of a suit for injunction relating to the ground floor of property bearing No. D-16, Rajan Babu Road, Adarsh Nagar, New Delhi - 110033 (hereinafter, "suit property"). The Petitioner/Plaintiff (hereinafter, "Plaintiff") is the occupant of the first floor of the suit property.

2. In an earlier round of litigation, this Court had considered the disputes between the parties and the interim relief to be granted. The following order was passed on 13th December, 2019:

"1. The grievance of the Plaintiff/Petitioner (hereinafter, "Plaintiff") is that by way of the impugned order dated 28th November, 2019, the Id. ADJ has declined interim relief.

2. The present suit for damages, declaration, permanent, mandatory and prohibitory injunction, has been preferred by the Plaintiff against the Defendants/Respondents (hereinafter, "Defendants") on the ground that Defendant No. 1/Respondent No.1 (hereinafter, "Defendant No.1") is carrying out unauthorised construction on the ground floor of property bearing No. D-16, Rajan Babu Road, Adarsh Nagar, Delhi-110033 (hereinafter, "suit property"), leading to damage to the building and also the first floor where the Plaintiff resides with his family.

3. The suit was listed on 27th November, 2019, on which date since the regular officer was on leave the matter was placed before the Link Court. On 27th November, 2019, the Link Court ordered status quo to be maintained in respect of the suit property till 28th November, 2019. On 28th November, 2019, vide the impugned order, the request for interim relief has been rejected and summons have been issued. The impugned order reads:

"Let the notice of the suit and the application be issued to the defendants on filing of PF/RC/speed post/courier for next date of hearing. Steps be taken within 05 days from today.

Counsel for the plaintiff submits that vide order dated 27.11.2019, the Link Court has passed the interim order in favour of the plaintiff with respect to the construction in the suit property till today and prays that the same may be extended. With due respect to the Link Court, it is noted that in the order dated 27.11.2019, the nature of the status quo order is not mentioned.

In response to the query as to whether the plaintiff has filed any document on record to show that he is the occupant of first floor of the suit property, counsel for plaintiff submits that the said document has not been filed as on date but seeks time to file the same on record. Heard. Request allowed.

In the absence of the said document, this court is not able to apply its mind qua the interim relief sought by the plaintiff at this stage. Hence, the said request is declined at this stage. Put up for WS/reply and consideration of application u/o 39 R 1 & 2 CPC on 18.12.2019."

4. Ld. counsel for the Plaintiff has shown to the Court the notice dated 21st October, 2019, issued by Respondent No.2 - the North Delhi Municipal Corporation, in respect of alleged unauthorised construction carried out on the ground floor of the suit property. Ld. counsel also relies upon photographs which show the damage caused to the suit property due to the unauthorised construction.

5. In the impugned order, the ld. Trial Court has primarily rejected the interim relief on the ground that no documents were placed on record to show that the Plaintiff was in occupation of the first floor of the suit property. At the stage of consideration of the interim relief, the Court simply records that since the documents were not on record to show possession of the first floor with the Plaintiff, the injunction is not liable to be granted.

6. A perusal of the plaint and documents now filed on record, including the Aadhar Card etc. show that the Plaintiff prima facie, is in possession of the first floor of the suit property. At this stage, after perusing the photographs and until further inquiry, a case is made out for extending the status quo granted by the Link Court.

7. Accordingly, till the next date of hearing, the order dated 27th November, 2019, directing status quo to be maintained in respect of the suit property shall continue till the next date before the Id. Trial Court i.e., 18th December, 2019. The Id. Trial Court may, after hearing the parties, and after calling for replies, pass an order on merits in the application for interim injunction.

8. Compliance of Order XXXIX Rule 3 CPC be done within 24 hours.

9. Accordingly, the petition and all pending applications are disposed of. The present order shall not be construed as an opinion on the merits of the case.

10. Order dasti under signature of the Court Master."

3. The same was modified on 17th December, 2019 in the following terms:

"Id. counsel for the Respondents has filed these applications seeking modification of the status quo order granted by this Court on 13th December, 2019. After having perused the applications and the averments made therein and considering the fact that the date before the Id. Trial Court is tomorrow, i.e. 18th December, 2019, it is directed that status quo order granted on the last date shall continue till tomorrow. The parties would appear before the Id. Trial Court, and the Id. Trial Court would consider the stand of both the Plaintiffs and the Defendant, as also the North Delhi Municipal Corporation, and pass appropriate orders either continuing the status quo orders or modifying the same.

The injunction application itself shall be disposed of by 24th December, 2019.

The Id. Trial Court shall not be affected by the observations either made by the Link Court or by this Court vide order dated 13th December, 2019, as the competing stands of the parties have not been examined by this Court on merits. Applications are disposed of.

Order dasti under the signature of the Court Master."

4. As per the above order, the Trial Court was to consider the application under Order XXXIX Rules 1 & 2 CPC and the status quo order was continued till the date before the Trial Court, i.e., 18th December, 2019. Post the order passed by this Court, on 23rd December, 2019, the Trial Court has passed an order merely in respect of the valuation of the suit. The application for interim injunction has been kept pending and there is no clarity as to whether status quo is continuing or not. Hence, the Plaintiff has preferred the present petition.

5. There is a factual dispute as to the extent of construction in the ground floor of the suit property and the damage, if any, that has been caused to the first floor of the suit property, which is being occupied by the Plaintiff. This Court deems it appropriate to appoint a Local Commissioner. Accordingly, Mr. Deepak, Advocate (M:9711573242), who is present in Court, is appointed as the

Local Commissioner to inspect the suit property and give a report on the following aspects:

- 1) The nature of the renovation/construction which is being carried out on the ground floor of the suit property;
- 2) To ascertain if there is any ostensible damage that has been caused to the first floor of the suit property or to the load-bearing walls of the suit property due to any renovation/construction being carried out on the ground floor of the suit property;
- 3) The nature and extent of construction, if any, being carried out in any other floor of the suit property and the persons who are in occupation of the various floors of the suit property;
- 4) The Local Commissioner shall also take photographs of the suit property, including the ground and first floor of the suit property;

6. Since the parties agree to cooperate in the execution of the commission, police assistance need not be taken in the first instance.

However, if the need arises, the Local Commissioner is permitted to seek assistance of the local police by contacting the SHO concerned. The counsels/representatives of the parties are permitted to assist the Local Commissioner during the execution of the commission. If required, parties are also permitted to have their structural engineer/architect assist the Local Commissioner.

7. The commission shall be executed on 11th January, 2020 at 12:30 pm and the report shall be submitted within a week of the execution of the commission. The fee of the Local Commissioner is fixed at Rs.50,000/-, to be shared equally by both the parties.

8. The status quo as on today shall be maintained by both the parties. It is made clear that since the Defendant/Respondent No.1 is a doctor, who is stated to be running his clinic on the ground floor of the suit property, the nature of the suit property shall not be changed till the inspection of the suit property by the Local Commissioner. Post the inspection, only internal repairs are permitted in the ground floor of the suit property, till further orders of this Court.

9. List on 7th February, 2020, for consideration of the petition.

10. Copy of the order be given dasti under signature of the Court Master.

PRATHIBA M. SINGH, J.

JANUARY 10, 2020/dk