

Dr Manjula Pathak Krippendrof vs Preeti Dawra & Anr on 19 March, 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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RSA 97/2019

DR MANJULA PATHAK KRIPPENDROF

..... Appellant

Through: Appellant in person (M:
9958692416) .

versus

PREETI DAWRA & ANR

..... Respondents

Through: Mr. Naushad Ahmed Khan, ASC
Civil GNCTD (M: 7210525656) .

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 19.03.2020 CM APPL. 10145/2020 (for early hearing) in RSA 97/2019

1. The present petition challenges the order dated 11th April, 2017 and the order upholding the same on 16th July, 2018. The operative portion of the Appellate Court's order reads as under:

"4. I have given careful consideration to the merits of rival contentions and find that possession of the plaintiffs/respondents over the first floor of the suit property is an admitted fact that till date there is no judicial finding /legal challenge to the sale deed dated 03.08.2006 executed in favour of plaintiff/respondents. The suit before the Ld. Trial Court was with regard to the injunction for restraining the defendant/ appellant in obstructing peaceful enjoyment of suit property. A bundle of rights are attached with the possession per se which could not be denied to the plaintiffs/respondents. Further, a perusal of Ld. Trial Court record shows that ample opportunities have been accorded to the appellant/ defendant to present her case and on the contrary the journey of trial from its case of institution from 25.12.2010 to the final impugned judgment dated 11.04.2017 passed through various miscellaneous applications. It is matter of record that the appellant/ defendant in her statement recorded on 06.01.2011 recorded by Ld. Trial Court stated that plaintiffs would be allowed to enter and leave the suit premises. In a suit for permanent injunction of such kind, the Ld. Trial Court has committed no infirmity in recognizing the rights of the plaintiffs/respondents about free ingress/egress of the suit property until their rights are found to be not available by following due process of law. The dispute between

appellant/defendant and Sh. Vijay Dixit would not alter the rights of the Plaintiffs/respondents unless and until it is established by process of law that there was no transfer of title based on the sale deed in favour of the plaintiffs/respondents."

2. The impugned orders - in effect, restrain the Appellant by a decree of permanent injunction from interfering with the Respondents' ingress and egress to the first floor of property bearing No. B-56, Defence Colony, New Delhi - 110024 (hereinafter, "suit property").
3. The petition was listed before this Court on 11th July, 2019, on which date the following order was passed:

In view of the reasons explained in the application the requisitioning of TCR is dispensed with at this stage. The application stands disposed of.

RSA 97/2019 & CM APPL No.21334-21335/2019 This appeal is against the judgment dated 16.07.2018 passed by the learned ADJ in RCA No.41/2017 and judgment dated 11.04.2017 passed by Civil Judge in CS 83267/2016. The suit was filed by the respondents for permanent injunction restraining the defendants from obstructing and interfering with free ingress and egress in the property B-56, Defence Colony, New Delhi and to have access to their portion at First Floor and other common areas from the main external gate etc. The suit was decreed in favour of the respondent herein. The respondent in fact examined four witnesses before the Trial Court and whereas the evidence of the appellant was closed. It is submitted by the appellant she filed an appeal viz. RCA 41/2017 duly explaining her absence from the Court on the dates when her case was listed for her evidence but such sufficient cause for non appearance was ignored by the learned Civil Judge. The learned ADJ held as follows:

"4. I have given careful consideration, to the merits of rival contentions and find that possession of the plaintiffs/respondents over the first floor of the suit property is an admitted fact that till date there is no judicial finding /legal challenge to the sale deed dated 03.08.2006 executed in favour of plaintiff/respondents. The suit before the Ld. Trial Court was with regard to the injunction for restraining the defendant/ appellant in obstructing peaceful enjoyment of suit property. A bundle of rights are attached with the possession per se which could not be denied to the plaintiffs/respondents. Further, a perusal of Ld. Trial Court record shows that ample opportunities have been accorded to the appellant/ defendant to present her case and on the contrary the journey of trial from its case of institution from 25.12.2010 to the final impugned judgment dated 11.04.2017 passed through various miscellaneous applications. It is matter of record that the appellant/ defendant in her statement recorded on 06.01.2011 recorded by Ld. Trial Court stated that plaintiffs would be allowed to enter and leave the suit premises. In a suit for permanent injunction of such kind, the Ld. Trial Court has committed no infirmity in recognizing the rights of the plaintiffs/respondents about free ingress/egress of the suit property until their rights are found to be not available by following due process of law. The dispute between appellant/defendant and Sh. Vijay Dixit would not alter the rights of the plaintiffs/respondents unless and until it is established

by process of law that there was no transfer of title based on the sale deed in favour of the plaintiffs/respondents."

At this stage it is submitted by the appellant she may be provided Delhi High Court Legal Services Committee (DHCLSC) so she can properly pursue the appeal. Let her appear before the Secretary, DHCLSC within a week from today for legal assistance.

List on 06.11.2019. Copy of this order be also communicated to the Secretary, DHCLSC for information."

4. A perusal of the above shows that the Appellant had not led her evidence in the matter. The Appellant claims to hold a mutation from the L&DO in respect of the suit property. Disputes have arisen between her and the Respondents who claim to have acquired a portion of the suit property from one Shri. Vijay Dixit.

5. The main petition is listed for hearing on 30th March, 2020. The present application seeks early hearing on the ground that the Appellant and her specially-abled child are in grave physical danger. It is submitted by the Appellant in person, who is herself a qualified doctor, that some unruly elements keep visiting the suit property and that the suit property is also in a dilapidated condition and may cause some danger to the Appellant and her daughter. The Respondents are stated to currently not be living in the suit property, however, it is apprehended that the said unruly elements engaged on behalf of the Respondents, are likely to create hindrances in the peaceful enjoyment of the ground floor of the suit property by the Appellant.

6. Considering the age of the Appellant, who is about 73 years of age, and the fact that her daughter is specially-abled, Id. counsel for GNCTD - Mr. Naushad Ahmed Khan, who is present in Court, has been requested to ascertain the facts from the local SHO. The SHO is also directed to conduct a periodic surveillance of the Appellant's property to assuage her fears so that no harm/danger is caused to the Appellant and her daughter. Let the status report be filed on the next date. The SHO shall also ascertain the physical condition of the suit property and submit the same in the status report.

7. Issue notice to the Respondents, returnable on 30th March, 2020. The Respondents are directed to be served by the SHO through all modes, including by e-mail and WhatsApp, as they are stated to be currently not residing in the country.

8. A copy of this order be given dasti under signature of the Court Master to the Appellant and to the Id. Counsel for the GNCTD. Let the status report be placed before this Court by the local SHO on the next date.

PRATHIBA M. SINGH, J.

MARCH 19, 2020 Rahul /T