

* **HIGH COURT OF DELHI : NEW DELHI**

+ **IA No.42/2008 in CS (OS) No.4/2008**

Smt. Kanchan Bala Thukral & Anr.Plaintiffs
Through: Mr. A.K. Singla, Sr. Adv. with Mr. H.D.
Sharma and Mr. J.K. Sharma, Adv.

Versus

Sh. Radheyshyam Malik & Ors.Defendants
Through: Mr. Pankaj Batra, Adv. for Defendants
No.2-4

Reserved on : October 27, 2009

Decided on : January 08, 2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

MANMOHAN SINGH, J.

1. By this order I shall dispose of I.A. No.42/2008 filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC). The said application for interim relief has been filed with the prayer that the operation of the defendants' complaint letter dated 19th November, 2007 submitted by way of objection to the plaintiffs' request for water connection with respect to their property marked as Green 1, Green 2

and Green 3 measuring 600 sq. yds. at 41, Nazafgarh Road Industrial Area, New Delhi (hereinafter referred to as the 'suit premises') be stayed.

2. The brief facts of the case are that the plaintiff No.1 has claimed to be the owner and in possession of the suit premises. One portion of the suit premises, i.e. Green 1 is under encroachment by a legal entity by the name of M/s. Kapston Plastic, for which the plaintiffs have filed CS (OS) No.2355/2007 in this Court. The plaintiffs purchased the suit premises from M/s. SMD, a registered partnership firm for a total consideration of Rs.7,05,000/- (for portion Green 1 and Green 3) and Rs.10,95,000/- (for portion Green 2) by virtue of sale deeds registered as Document No.9800, Book No.1, Volume No.12640 pages 81 to 89, Document No.16198, Book No.1, Volume No.14097, pages 133 to 141 and Document No.7501, Book No.1, Volume No.14672 pages 30 to 38 with the Sub-Registrar, Janak Puri, New Delhi on 31st March, 2005, 1st August, 2006 and 26th April, 2007 respectively.

3. The said M/s. SMD came into possession of the suit premises (as part of the total 0.86 acres) by virtue of sale deed dated 24th February, 1975 between the DDA and itself. Defendant No.1 came into possession of 900 sq. yds. of the total area at 41, Najafgarh Road Industrial Area, New Delhi by coming to some agreement with M/s. SMD. Both parties, i.e. the plaintiff No.1 as well as defendant No.1, own their respective portions of the said property.

4. The dispute arose when the defendants caused a legal notice dated 23rd April, 2007 to be delivered to the plaintiff No.1, which was

received by the said plaintiff in May, 2007 and reply to which was sent on 1st June, 2007. As per the said notice, the defendants stated, inter alia, that the plaintiffs were not owners but tenants of the suit premises and that they paid rent to the defendant No.1 at the rate of Rs.50,000/- per month.

5. Further, in and around November, 2007, the plaintiffs applied for municipal water connection for the suit premises. In due course of the said procedure, the plaintiffs came across a letter dated 19th November, 2007 sent by defendant No.1 to the concerned authorities objecting to the issuance of the water connection to the plaintiffs. The said act of the defendant No.1 in addition to the legal notice dated 23rd April, 2007 are stated to be affecting the legal rights of the plaintiffs with respect to their title and possession as regards the suit premises. Thus, the present suit was filed for declaration of the defendants' acts with regard to the suit premises and their attempt to label the plaintiffs as tenants thereof as illegal and false and further, to restrain the defendants from interfering with the plaintiffs' ownership rights with regard to the same.

6. In the present application under consideration, the plaintiffs have submitted that they are carrying on business activities in the suit premises as production of goods is being carried out from the area Green 2. Further, the defendants have been threatening to interfere with the plaintiffs' possession time and again, as is expressed in their legal notice dated 23rd April, 2007 as well as letter dated 19th November, 2007. In view of the facts, the plaintiffs have submitted that they have

made a prima facie case and that the balance of convenience is in their favour.

7. In their reply to the plaintiffs' submissions, aside from contending that the plaintiffs' suit is barred by law, defendant Nos.2 to 4 have submitted that the plaintiffs are not the owners but the tenants of the suit premises. Further, the defendant Nos. 2 to 4 have submitted that the sale deeds produced by the plaintiffs are forged and fabricated documents, and have all been back dated in order to provide credence to the plaintiffs' story. In addition, the details of the cheques etc. as mentioned in the agreements and the dates etc. as shown in the documents are not only contradictory, but in fact do not even contain the signatures of the first party.

8. The defendant No.1 has not filed the written statement nor appeared before the Court on 27th October, 2009 and was proceeded ex-parte.

9. As per the defendants, the entire property at 41, Najafgarh Road Industrial Area, New Delhi was sold to Sh. Surjit Singh vide agreement dated 16th February, 1948. Thereafter, the rights with respect to the said property were transferred in favour of M/s. Tropical Insurance Co. vide agreement dated 2nd February, 1950, being further transferred in favour of Sardar Harnam Singh and Sardar Nirmal Singh vide agreement dated 22nd November, 1950. The rights were then transferred in favour of M/s. SMD vide agreement dated 13th September, 1953. Thereafter, the defendant Nos.2 to 4 have outlined the contours of the entire history of the suit premises in paras 4 to 6. At

this stage, these submissions need not be discussed in detail as the relief asked for in the interim application under consideration is very limited. It appears that the defendant No.1, who is the husband of defendant No.2 and father of defendant Nos.3 and 4 is now not appearing in the matter and is making complaints despite having the knowledge that prima facie the rights have been transferred in favour of the plaintiff by virtue of the sale deed with regard to the suit property.

10. I have perused the submissions of both parties. In support of his submission, the plaintiffs have referred three sale deeds which have been mentioned in detail in para 2 of this order. Having seen the same, prima facie I am of the view that the plaintiffs have made out a prima facie case in their favour at this stage. The validity of the documents as challenged by the defendants shall be considered at the appropriate time as per their own merit.

11. As far as the letter issued by the defendants is concerned, in view of the facts stated in the pleadings this court directs that the operation of the defendants' complaint letter dated 19th November, 2007 submitted by way of opposition to the plaintiffs' prayer for water connection for their property described with marks Green 1, Green 2 and Green 3 is stayed, however, the plaintiffs shall be entitled to get the water connection after the production of requisite documents as required by the authority in accordance with law. The interim application being I.A. No.42/2008 is disposed of with the aforesaid direction.

CS (OS) No.4/2008

12. List the matter for framing of issues on 12th April, 2010 when the pending applications shall also be listed.

JANUARY 08, 2010

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MANMOHAN SINGH, J.