

IN THE COURT OF SH. ARUN SUKHIJA,
ADDITIONAL DISTRICT JUDGE – 07, (CENTRAL DISTRICT)
TIS HAZARI COURTS, DELHI.

SUIT NO.:- 128/2020

UNIQUE CASE ID NO.:- 5994/2018

IN THE MATTER OF :-

1. Sh. Nazir-ul-Islam
2. Sh. Abdul Muttalib
3. Sh. Mohd. Abdullah
4. Sh. Mohd. Tayyab
5. Sh. Mohd. Najam Akhtar
6. Sh. Mohd. Rizwan Noor
7. Mst. Fozia Noor
8. Mst. Naved Kehkashan

All sons and daughters of Late Sh. Noor-ul-Islam
All R/o 1181, Tokri Walan,
Jama Masjid, Delhi-110006.

...Plaintiffs

VERSUS

1. Sh. Yogender Kumar
S/o Late Sh. Om Prakash
2875, Teliwara Chowk, Sarai Hafiz Banna,
Bahadur Garh Road, Sadar Bazar,

Delhi-110006.

2. **Ms. Uma Chaudhry
D/o Late Sh. Om Prakash
301, Tower-4, Parsavnath La Tropicana,
Kheberpass, Civil Lines, Delhi-110054.**
3. **Ms. Usha Gupta
D/o Late Sh. Om Prakash
C/o Chandra & Co.,
21/94 Free Ganj, Agra-282004, (UP)**

**No. 2 and 3 also at 2875, Teliwara Chowk,
Sarai Hafiz Banna, Bahadur Garh Road,
Sadar Bazar, Delhi-110006.**

...Defendants

SUIT FOR PERMANENT INJUNCTION

Date of institution of the Suit	: 29/08/2018
Date on which Judgment was reserved	: 27/05/2020
Date of Judgment	: 06/06/2020

::- J U D G M E N T -::

By way of present judgment, this Court shall adjudicate upon suit for permanent injunction filed by the plaintiffs against the defendants.

CASE OF THE PLAINTIFF AS PER PLAINT

Succinctly, the necessary facts for just adjudication of the present suit, as stated in the plaint, are as under:-

- (a) The plaintiffs are the joint owners/landlord of property bearing no. 2875, Ward no. XIII, Teliwara Chowk, Sarai Hafiz Bana, Bahadur Garh Road, Sadar Bazar, Delhi-110006, having an area of 544 sq. mtrs. (approx.) comprising of two shops and gate/ passage in between the shops with terrace above and open piece of land behind and contiguous to the shops and passage.
- (b) The plaintiffs no. 1 & 3 to 8 have executed a General Power of Attorney dated 26.05.2008 in favour of plaintiff no.2, whereby, the plaintiff no.2 has been appointed as their true and lawful general attorney in respect of various properties co-owned by them, including the suit property. Therefore, the present plaint has been signed by plaintiff no.2 for himself as well as on behalf of plaintiffs no. 1 & 3 to 8 being their lawful general attorney.
- (c) Initially, the suit property was let-out by grandfather of the plaintiffs namely Haji Badar-ul-Islam to the predecessors of defendants i.e. Sh. Mukand Lal and Sh. Om Prakash as joint tenants about 70 years back for the purpose of timber business. Sh. Mukand Lal has already expired long ago, but Sh. Om Prakash never disclosed the death of Sh. Mukand Lal to father of plaintiffs namely Noor-ul-Islam or to the plaintiffs. Since it was a joint tenancy in the names of Sh. Mukand Lal and Sh. Om Prakash, to whom the suit property was let-out, therefore, after death of Sh. Mukand Lal, tenancy rights passed on to Sh. Om Prakash, according to the rule of survivorship.
- (d) Sh. Om Prakash also died on 24.10.1996 leaving behind the defendants and Smt. Tula Devi wd/o Late Sh. Om Prakash as his only legal heirs as per knowledge of plaintiffs. Since it was a joint tenancy, therefore, after the death

of both the original joint tenants, Smt. Tula Devi and defendants, being widow, son and daughters respectively of Sh. Om Prakash became joint tenants under the plaintiffs by operation of law. Smt. Tula Devi also died on 01.02.2007 and after her death, defendants became the only joint tenants in respect of the suit property under the landlord-ship of plaintiffs by operation of law.

- (e) In the year 1961, Haji Badar-ul-Islam gifted two shops and Gate/ passage in between the said two shops forming part of suit property with certain other properties to his son Sh. Noor-ul-Islam (father of the plaintiffs) vide Gift Deed duly registered on 28.02.1961. The rear portion contiguous to the suit property was partly and temporarily tin covered and temporary Kothas at that time was part of suit property and which was also under the tenancy of Sh. Mukand Lal and Sh. Om Prakash, as stated above, was left out from the said registered Gift and was given a Private no.2875A, as shown in Site Plan of gifted properties. The said tin covers and Kothas were removed by tenants at some point of time later on and it remained an open piece of land contiguous to and behind the shops and passage being part of the suit property.
- (f) After a few days of the aforesaid registered Gift made to Sh. Noor-ul-Islam, on 28.02.1961, Haji Badar-ul-Islam also orally gifted the said rear portion, which formed part of the tenanted premises since the inception of tenancy and which was given Private no. 2875A to his son Noor-ul-Islam, which was also accepted by him. The rent of the entire suit property at the time of said gifts (Registered gift and oral gift) was Rs.105/11/6 per month. Thereafter, Haji Badar-ul-Islam on 15.03.1961 also wrote a letter to Municipal Corporation of

Delhi informing them regarding the gifted properties (Registered gift and oral gift) and requested them to mutate the same in the name of his son Noor-ul-Islam, wherein, it was clearly mentioned that *“The land contiguous in property no. 2875, which is under the tenancy of the said tenants Lala Mukand Lal and Om Prakash and is included in the said rent is gifted orally by the applicant.”* Haji Badar-ul-Islam informed the tenants about the above mentioned gifts of the properties pursuant to the registered Gift Deed and oral Gift.

- (g) Sh. Noor-ul-Islam also on 22.03.1961 applied for mutation of the above mentioned entire gifted properties i.e. suit property and other gifted properties along-with the letter dated 15.03.1961 of Haji Badar-ul-Islam in Municipal Corporation of Delhi and got the suit property, inter-alia, other gifted properties mutated in his name and started realizing rents from the tenants therein during the lifetime of his father Haji Badar-ul-Islam as owner/landlord thereof.
- (h) After mutation of the properties of registered gift and oral gift in his name, Sh. Noor-ul-Islam as owner/landlord issued rent receipt in respect of the entire suit property i.e. two built up shops, one built up Phatak (Gate) and open piece of land bearing Municipal no. 2875, which comprised of the entire tenanted premises to the them tenants Sh. Mukand Lal and Om Prakash, who were already tenants of entire suit property. Hence, the private number 2875A, which was given to the said rear portion by Haji Badar-ul-Islam at the time of registered gift and after making of Oral Gift of said rear portion and mutation

of gifted properties i.e. properties gifted by way of registered Gift Deed and orally and after issuance of the rent receipts of entire suit property became non-existent. No rent receipt was ever issued separately to the predecessors of defendants or to the defendants for 2875A. As stated, the entire premises in suit bears the same municipal number 2875 and is mentioned in rent receipts.

- (i) Sh. Noor-ul-Islam died on 06.09.1971 and after his death, his widow Mst. Hamida Sultan and the plaintiffs, being his sons & daughters became the owners of the suit property. Mst. Hamida Sultan died on 12.04.2009 leaving behind the plaintiffs i.e. her sons and daughters as her legal heirs. The plaintiffs are, thus, the absolute owners of the entire suit property. The plaintiffs are also paying the house tax of the suit property, which is paid till date according to the MCD Amendment Act, 2003.
- (j) The tenancy of the defendants was terminated by Notice dated 17.03.2009 and thereafter, the defendants were called upon to pay damages for use and occupation for the suit property. However, the defendants sent rent @ Rs.105.65 p.m. till 30.11.2009 and the same was accepted by the plaintiffs without prejudice to their rights and without prejudice to the Notice dated 17.03.2009.
- (k) On 24.12.2010, the plaintiffs filed an eviction petition in respect of the suit property under Section 14(1)(e) read with Section 25-B of Delhi Rent Control At against the defendants bearing no. E-696/14 (New no.E-479698/16) titled as Nazir ul Islam & Ors. Vs. Yogender Kumar & Ors. The defendants filed their Leave to Defend application in the said eviction petition and were granted

leave to defend vide order dated 11.08.2015 passed by Sh. Sunil Kumar, the then Ld. ARC, Tis Hazari Courts, Delhi. Being aggrieved by this Order, the plaintiffs filed a Revision Petition no. 485/2015 titled as Nazir ul Islam & Ors. Vs. Yogender Kumar & Ors. before the Hon'ble High Court of Delhi, which was dismissed vide Order dated 11.01.2018 where-after, the plaintiffs filed an SLP bearing no. 11194/18 titled as Nazir ul Islam & Ors. Vs. Yogender Kumar & Ors. before the Hon'ble Supreme Court of India, which was disposed of vide Order dated 08.05.2018, whereby, the Ld. Trial Court was directed to complete the trial of the said eviction petition within a period of six months from the date of communication of the Order. The defendants, with malafide intentions and with a view to defeat the rights of the plaintiffs in the suit property and to delay the eviction proceedings are threatening and are trying to create third party interest in the suit property by sub-letting, assigning, transferring, alienating or parting with possession of the same in favour of any third party and have also been threatening to raise and make additions, alterations and construction in the suit property.

- (1) Since the last few days, the plaintiffs have noticed that property dealers of the area are visiting the suit property with strangers and are showing them the suit property. On 11.08.2018, upon inquiry from the visiting strangers, it has come to the knowledge of plaintiffs that the defendants are intending to sublet, assign and transfer whole or part of the suit property in favour of third party by handing-over the possession of whole or part of the suit property to some third party.

- (m) On 21.08.2018, after the court proceedings, the plaintiff no. 2 met the defendant no.2 and requested him to abide by law and further warned him not to create any third party interest in the suit property and further, not to make any additions, alterations and construction in the suit premises, whereas, the defendant no.1 was adamant and flatly told plaintiff no.2 not to interfere in his matters. Hence, the present suit has been filed by the plaintiffs against the defendants.

CASE OF THE DEFENDANT NO.1 AS PER WRITTEN STATEMENT

Summons for settlement of issues were issued to the defendants and defendant no.1 has filed his Written Statement in the present case. Succinctly, the case of defendant no.1 is as under:-

- (a) The plaintiffs are not the owners of entire suit property, the plaintiffs are owners with respect to the part of suit property bearing no. 2875 only. The documents like Copy of Registered Gift Deed along-with its Site Plan reveal that plaintiffs are owners by virtue of registered Gift Deed executed by Late Mr. Haji Badrul Islam vide registered as document no. 1021, book-I, Volume 3214 at pages 189 to 187 registered on 28.02.1961 before the Sub-Registrar, Delhi. The Site Plan pertains to the said Gift Deed has been shown in red bounded colour, whereas, the property 2875-A is not a part of gifted properties. The property bearing no. 2875/A is clearly shown as other's property in the registered Site Plan of gifted properties.
- (b) The whole plaint of the plaintiffs has been lacking any documents to support that 2875/A has been transferred into the ownership of Late Haji Badrul Islam

(grandfather of plaintiffs). The plaintiffs have been deliberately and malafidely assigning/ merging no. 2875/A into 2875. The plaintiffs have mentioned in the plaint the property in question as 2875 only. On the other hand, the Site Plan filed by the plaintiffs have been showing 2875/A as part of suit property and tried to prove as suit property. In comparison with Site Plan of Gift Deed and Site Plan of the suit property, it is clear that 2875/A has been wrongly, dishonestly and malafidely shown as 2875. It is also clear from the copy of rent receipts filed by plaintiffs that plaintiffs always claimed and received the rent for property no. 2875 only since last 70 years and plaintiffs never claimed rent for property no. 2875/A and neither the deceased father of defendant, who was the actual tenant in the property no. 2875, never paid rent for property no. 2875/A to any of the plaintiffs.

- (c) The defendants are in possession of property no. 2875/A as tenants under the ownership of Mr. Allah Razi and not the plaintiffs (as mentioned open piece of land in Site Plan of suit property).
- (d) On merits, the contents of the plaint have been denied and it has been submitted that only part of suit property was let-out in the name of M/s. Mukand Lal Om Prakash Timber Merchants 70 years back. The property bearing no. 2875/A was not under the ownership of Late Badrul Islam and 2875/A is clearly shown as other's property in the Site Plan of registered Gift Deed in the year 1961. The property bearing no. 2875/A is under the ownership of different landlord other than plaintiffs herein and property bearing no. 2875/A is having clearly identity prior to 1948.

- (e) A family settlement was arrived between the legal heirs of Haji Badrul Islam in the year 1981, where all the properties of Haji Badrul Islam was divided by Arbitrator and accepted before the Hon'ble High Court, in the said list of all properties presented before Hon'ble High Court, the LRs of Haji Badrul Islam never disclosed or discussed about the property no. 2875/A because it was not owned by Haji Badrul Islam. Haji Badrul Islam wrote letter to MCD for mutation of property no. 2875 only and nothing mentioned about property no. 2875/A in the said letter. Sh. Noor-ul-Islam applied for mutation of the properties, as mentioned in registered Gift Deed and MCD mutated the same. Sh. Noor-ul-Islam never applied for mutation for property no. 2875/A.
- (f) Property no. 2875/A was existed much prior to inception of tenancy to the predecessors of defendants under the ownership of different landlord namely Allah Razi and till date, it is existed continuously. The plaintiffs never paid property tax for part of suit property bearing no. 2875/A. It has been prayed to dismiss the suit with heavy costs.

REPLICATION

The plaintiffs have filed reply (replication) to the Written Statement of defendant no.1 and controverted the assertion made in the Written Statement filed by defendant no. 1 and reiterated the contents of the Plaint.

EX-PARTE PROCEEDINGS

The defendant no.1 had filed the written statement. The defendants no.2 and 3 have neither appeared nor file written statement accordingly vide order dated 03.04.2019, the right of defendants no. 2 and 3 to file WS was closed. Thereafter,

defendant no.1 had also stopped appearing and vide order dated 01.06.2019, defendants, including defendant no.1, were proceeded ex-parte.

EVIDENCE OF THE PLAINTIFFS AND DOCUMENTS RELIED UPON BY PLAINTIFFS

The plaintiffs, in order to prove their case, led plaintiffs' evidence and got examined Sh. Abdul Muttalib as PW-1, who had filed his evidence by way of affidavit, wherein, he reiterated and reaffirmed the contents of the plaint. PW-1 in his testimony has relied upon the documents:-

1. Photocopy of GPA dated 26.05.2008 executed by plaintiffs in favour of plaintiff no.1 is Ex.PW1/1 (OSR).
2. Site Plan is Ex.PW1/2.
3. Photocopies of rent receipts are Ex.PW1/3 to Ex.PW1/5 and English translations thereof are Ex.PW1/3A to Ex.PW1/5A respectively.
4. Photocopy of certified copy of Gift Deed registered on 28.02.1961 is Ex.PW1/6 and photocopy of Site Plan attached with the Gift Deed is Ex.PW1/7 and fare re-drafted copy of the Site Plan attached with the Gift Deed is Ex.PW1/7A.
5. English translation of the Gift Deed is Ex.PW1/8.
6. Copy of certified letter dated 15.03.1961 obtained from MCD is Ex.PW1/9 and its English translation is Ex.PW1/10.
7. Copy of certified copy of mutation proceedings/order obtained from MCD is Ex.PW1/11 and its fair typed copy is Ex.PW1/12.

8. Copy of certified copy of Demand and Collection Registered of MCD of 1961 is Ex.PW1/13.
9. Copy of certified copy of House Tax Bills for the year 1965-66 is Ex.PW1/14.
10. Copy of certified copy of Inspection Form of 1983-84 of MCD is Ex.PW1/15.
11. Copies of carbon copies of rent receipts are Ex.PW1/16 to Ex.PW1/22 (In Examination in chief wrongly mentioned as Ex.PW1/12 instead of Ex. PW-1/22) and their English translations are Ex.PW1/16A to Ex.PW1/22A.
12. Copy of rent deed dated 04.12.1993 is Ex.PW1/23 and its English translation is Ex.PW1/24.
13. Certified copy of the Site Plan exhibited in Eviction Petition no. E-696/14 (New no. E-479698/16) titled as Nazir ul Islam & Ors. vs. Yogender Kumar & Ors. is Ex.PW1/25.
14. Copy of application for mutation, indemnity bond, affidavit and Site Plan received in the office of MCD are Ex.PW1/26 (colly. – 5 pages).
15. Copy of Public notice published in ‘The Statesman’ dated 29.05.1999 is Ex.PW1/27 (OSR).
16. Copies of house tax receipts are Ex.PW1/28 to Ex.PW1/37 (OSR).
17. Certified copy of notice dated 18.05.2009 is Ex.PW1/38 and copy of reply to the said notice dated 18.05.2009 is Ex.PW1/39.
18. Certified copy of cross-examination dated 07.03.2019 and 13.03.2019 in the Eviction Petition is collectively Ex.PW1/40 (Colly. – 10 pages).
19. Certified copy of carbon copy of rent receipts (seven in no.) and their English translation in the Eviction Petition are Ex.PW1/41 (colly.), and

20. Certified copy of order/judgment passed in Eviction petition is Ex.PW1/42.

The plaintiffs have also summoned and examined the following witnesses:-

- a. Sh. Sandeep Rana, Asstt. Ahlmad of the Court of Sh. Puneet Pahwa, Ld. ARC-02, Central, Tis Hazari Courts as PW-2, who brought the case file of Eviction Petition bearing no. E-696/14/11 (New no.E-479698/16) titled as Nazir ul Islam & Ors. Vs. Yogender Kumar & Ors. PW-2 has compared and proved on record the already exhibited documents i.e. Ex.PW1/25 and Ex.PW1/38 to Ex.PW1/42.
- b. Sh. Sevajit, Record Attendant, Department of Delhi Archives, Govt. of NCT of Delhi as PW-3. PW-3 has compared and proved on record the already exhibited documents i.e. Ex.PW-1/6 and Ex.PW-1/23. Further, he proved on record photocopy of office copy of document no. 3832 as Ex.PW3/1 (2 pages) and
- c. Sh. Roshan Lal Sharma, Inspector, House Tax Department, Old Hindu College, Kashmere Gate, Delhi-110006 as PW-4. PW-4 has compared and proved the documents which are already exhibited as Ex.PW-1/9, Ex.PW-1/11, Ex.PW-1/15 and Ex.PW-1/26.

This Court heard ex-parte final arguments through Video Conference, as advanced by Ld. Counsel for the plaintiffs and perused the material available on record.

FINDINGS AND CONCLUSIONS OF THE COURT

The English translation of the Gift Deed is Ex.PW1/8 and photocopy of certified copy of registered Gift Deed dated 28.02.1961 is Ex.PW1/6. The perusal of English translation of the Gift Deed reveals that Haji Badar-ul-Islam gifted two shops and Gate/passage in between the said two shops forming part of property no.2875, Ward no. XIII, Teliwara Chowk, Sarai Hafiz Bana, Bahadur Garh Road, Sadar Bazar, Delhi-110006 to Mr. Noor-ul-Islam. The certified copy of letter dated 15.03.1961 is Ex.PW1/9 and its English translation is Ex.PW1/10. The said letter reveals that Haji Badar-ul-Islam had orally gifted contiguous portion of the said property and requested to the MCD for mutation of the said property in favour of Noorul-ul-Islam. The said property was also mutated in terms of mutation proceedings/order Ex.PW1/11.

The defendant no.1 had filed the Written Statement to contest the present suit, however, on 01.06.2019, he was proceeded ex-parte. The Ld. ARC has passed the eviction order dated 07.09.2019 (Exhibit PW-1/42) against the defendants. The perusal of the certified copy of Site Plan along-with Eviction Petition reveals that the suit property, as depicted in the said Site Plan, is same as in Site Plan Ex.PW1/2. The plaintiffs have pleaded and the same is also reiterated in evidence by PW-1 that plaintiffs have noticed that property dealers of the area are visiting the suit property with strangers and are showing them the suit property and on 11.08.2018, upon inquiry from the visiting strangers, it has come to the knowledge of plaintiffs that defendants are intending to sublet, assign and transfer whole or part of the suit property in favour of third party by handing-over the possession of whole or part of

the suit property to some third party. It is further pleaded by the plaintiffs that on 21.08.2018, after the court proceedings, the plaintiff no. 2 met the defendant no.2 and requested him to abide by law and further warned him not to create any third party interest in the suit property and further, not to make any additions, alterations and construction in the suit premises, whereas, the defendant no.1 was adamant and flatly told plaintiff no.2 not to interfere in his matters.

The defendants have not cross-examined plaintiffs' witnesses to contradict or disprove the case of plaintiffs. The defendant no.1 has also not adduced the evidence to prove the defence, as pleaded in the Written Statement. The defendants have chosen not to appear and when the case of the plaintiffs has gone un-challenged, uncontroverted, un-rebutted and duly corroborated by the documents, this Court has no reason to disbelieve the version of the plaintiffs.

From the discussions, as adumbrated hereinabove, I hereby pass the following

FINAL ORDER

- i. A decree for Permanent Injunction is passed in favour of the plaintiffs and against the defendants thereby restraining the defendants and their successors, agents, employees etc. from sub-letting, assigning, transferring, alienating or parting with possession or creating any third party interest or carrying out any additions, alterations and construction in the suit property i.e. property bearing no. 2875, Ward no. XIII, Teliwara Chowk, Sarai Hafiz Bana, Bahadur Garh Road, Sadar Bazar, Delhi-110006, having an area of 544 sq. mtrs. (approx.) comprising of two shops and gate/ passage in between the shops with terrace

above and open piece of land behind and contiguous to the shops and passage and more particularly shown in Exhibit PW-1/2.

- ii. The cost of the suit is also awarded in favour of the plaintiffs and against the defendants jointly and severally.

Decree-sheet be prepared accordingly in terms of this decision.

File be consigned to Record Room after due compliance.

**Announced through Video Conference on
this 06th day of June, 2020.**

**(ARUN SUKHIJA)
ADJ-07 (Central)
Tis Hazari Courts, Delhi**