

**IN THE COURT OF VIKAS DHULL, ADDITIONAL
DISTRICT JUDGE-01, WEST, THC, DELHI**

Smt.Jasbir Kaur

... Plaintiff

VERSUS

- 1. Deepak Kumar**
- 2. South Delhi Municipal Corporation**
- 3. BSES Rajdhani Power Ltd.**
- 4. Kamla (as per amended plaint)**

... Defendants

**THROUGH CISCO WEBEX VIDEO
CONFERRNCING**

02.06.2020 (11.30 a.m. to 12.00 noon)

Pr: Sh.Pradeep Kumar, Ld.counsel for plaintiff.

(Mobile No. of Ld.counsel Sh.Pradeep Kumar:
9910857195).

(Email ID of Ld.counsel Sh.Pradeep Kumar:
pradeep.lwyr28@gmail.com).



Sh.Harish Kumar, Ld.counsel for defendants no.1 and 4 (**proposed defendant**).

(M.No. 8010079176)

(Email ID of Sh.Harish Kumar: harishhm08081991@gmail.com).

Sh.Jasbir Singh, Ld.counsel for defendant no.3.

(M.No. 8130328014)

(Email ID: jsingh.11m@gmail.com)

Defendant no.2 absent.

1. Ld.counsel for defendant no.1 has filed on record the complete chain of ownership documents alongwith the house tax calculation Form and the receipt of payment of house tax with regard to **property bearing no. 243, Third Floor, Chand Nagar, New Delhi-110018 (hereinafter referred to as suit property)**.
2. Plaintiff's counsel admits regarding receipt of aforementioned documents.
3. Ld.counsel for defendant no.3 admits regarding receipt of application under Order VI Rule 17



CPC as well as other documents.

4. Firstly, I shall take up the application under Order VI Rule 17 CPC filed by plaintiff seeking amendment of the plaint.

5. Arguments heard and record perused.

6. Vide the present application, plaintiff has sought amendment of paras 4 and 5 of the plaint to incorporate as to what was sold by Sh.Santokh Singh to Smt.Balwinder Kaur (**predecessor in interest of defendants no.1 and 4**) and to bring on record the fact that apart from defendant no.1, defendant no.4 is also the co-owner of the suit property.

7. Ld.counsel for defendants no.1 and 3 submitted that they have no objection to the allowing of application seeking amendment of the plaint.

8. In the facts and circumstances, since the amendment being sought by plaintiff is just to add the co-owner i.e. defendant no.4 and to incorporate certain facts regarding as to what was transferred by Sh.Santokh Singh to



Smt.Balwinder Kaur (**predecessor-in-interest of defendants no.1 and 4**) and having regard to the fact that the matter is at the initial stage and amendment being sought will not change the nature of the suit, **the application filed under Order VI Rule 17 CPC is allowed and amended plaint is taken on record.**

9. Arguments on the pending injunction application also heard today.

10. It is not in dispute between the parties that Sh.Santokh Singh, husband of plaintiff had sold the property to Smt.Balwinder Kaur, who in turn had sold the same to Smt.Suman Miglani from whom defendants no.1 and 4 had purchased the same. However, plaintiff has asserted that Sh.Santokh Singh had only sold the second floor to Smt.Balwinder Kaur whereas the claim of defendants no.1 and 4 is that second floor and the roof rights was sold by Sh.Santokh Singh to Smt.Balwinder Kaur and thereafter, Smt.Balwinder Kaur had sold the second and



third floor to Smt.Suman Miglani from whom defendants no.1 and 4 had purchased the same.

11. In order to resolve the controversy, I have carefully perused the documents filed on record by defendant no.1 and as per the sale deed executed by Sh.Santokh Singh in favour of Smt.Balwinder Kaur, he had sold the second floor with roof rights to Smt.Balwinder Kaur. Therefore, the argument of plaintiff's counsel that only second floor was sold to Smt.Balwinder Kaur is prima facie found to be incorrect as per the documents filed on record by defendant no.1.
12. Secondly, it was contended by plaintiff's counsel that defendants no.1 and 4 are carrying out unauthorized and illegal construction on the third floor of the suit property.
13. The said fact was disputed by Id.counsel for defendants no.1 and 4 by submitting that at the time of purchase of suit property, one room was



already constructed on the third floor and they are merely carrying out renovation of the said room by getting it painted and whitewashed and no construction is being done on the third floor of the suit property.

14. It was further submitted that the previous chain of documents filed on record alongwith property tax receipt shows that one room was already constructed on the third floor and no fresh construction has been carried out by defendants no.1 and 4 on the third floor of the suit property.
15. It was further submitted by him that defendants no.1 and 4 undertake not to carry out any illegal or unauthorized construction at the third floor of the suit property and whatever construction will be done will be done after taking required prior permission of the civic authorities.
16. The existence of one room at the third floor was not disputed by the plaintiff's counsel



during the course of arguments.

17. Further, no proof was filed on record by plaintiff's counsel on record in the form of photographs to show that any kind of construction material was stocked by defendants no.1 and 4 at the third floor of the suit property in support of his submission that defendants no.1 and 4 are carrying out construction on the same.
18. Further, the property tax documents filed on record by defendant no.1 also shows that previous owner Smt.Suman Miglani had paid the house tax with regard to third floor also to show that the construction was already in existence. Therefore, no prima facie case is made out to show that defendants no.1 and 4 are carrying out any kind of illegal construction at the third floor of the suit property for which they are required to be injuncted.
19. The other prayer made in the plaintiff's application was to restrain defendant no.3 i.e.



BSES from sanctioning any electricity connection at the third floor of the suit property.

20. In this regard, Id.counsel for defendant no.3 had submitted that as of today, there is no electricity connection sanctioned at the third floor of the suit property and as and when electricity connection will be applied for by owners, the same shall be sanctioned as per the rules and policy of defendant no.3.
21. From the material on record, since there is nothing on record to show that defendants no.1 and 4 are carrying out any kind of unauthorized or illegal construction, therefore, no case is made out for grant of interim injunction against defendants no.1,3 and 4. **The application under Order XXXIX Rule 1 and 2 CPC is accordingly, dismissed.**
22. **Put up on 02.07.2020 for filing of written statement by defendants.**
23. A copy of order be sent to the Id.counsel for plaintiff, defendants no.1 and 4 and defendant



Page:9/9

**no.3 by the Filing Section, West, THC, Delhi
through email.**


**(Vikas Dhull)
ADJ-01, WEST
THC, DELHI
(Duty Officer)
02.06.2020**