

**IN THE COURT OF Ms. TANIA SINGH,
CIVIL JUDGE-01, CENTRAL: TIS HAZARI COURTS: DELHI**

Suit no. 96081/2016

1. Shri Dharam Vir Jain

S/o Late Shri Bahadur Singh

R/o 301, Dariba Kalan, Delhi-110006.

2. Shri Satyender Kumar Jain

S/o Late Shri Ranjit Singh Jain

R/o 306, Dariba Kalan, Delhi-110006.

3. Shri Chakresh Kumar Jain

S/o Late Shri Ranjit Singh Jain

**R/o 7/23, IInd Floor, Ansari Road,
Darya Ganj, New Delhi-110002.**

4. Smt. Krishna Devi Verma

W/o Late Shri Ram Singh Verma

R/o 1469, Gali Arya Samaj,

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Bazar Sita Ram, Delhi-110006.

5. Smt. Chaman Kali Jain

W/o Late Shri Bahadur Singh

R/o 30, Dariba Kalan, Delhi-110006.

..... Plaintiffs

Versus

1. Delhi Hindustani Mercantile Association (Regd)

Through its Authorised Person

1213, IInd Floor, Eastern Side,

Main Chandni Chowk, Delhi-110006.

2. Municipal Corporation of Delhi

Through its Commissioner

Town Hall, Delhi-110006.

..... Defendants

Date of Filing : 06.06.2007

Date of pronouncement of judgment : 08.06.2020

JUDGMENT

1. Vide this judgment, I shall dispose off the present suit for relief of permanent and mandatory injunction filed on 06.06.2007, by the plaintiffs against the defendants seeking the following reliefs:

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- A) A decree of permanent injunction restraining the defendant no.1 to raise illegal and unauthorised construction in the tenanted premises bearing no. 1213, second and third floor eastern side, Main Chandni Chowk, Delhi-110006 (hereinafter referred to as the 'suit property')
- B) A decree of mandatory injunction against defendant no. 2 directing it to demolish the illegal and unauthorized construction raised at the suit property.

Case of the plaintiff as per the plaint

2. The plaintiffs have claimed to be the co-owners of the suit property and landlord to defendant no. 1, monthly rent being Rs. 200/- per month with respect to the second floor and Rs.50/- with respect to the third floor of the suit property. The tenanted premises is stated to originally consist of three rooms and one hall at the second floor and a tin shed on the third floor.
3. As per the plaint, the entire property bearing no. 1213 was initially owned by M/S Hukam Chand Jagadher Mal with Pt. Mehboob Singh, Lala Jagadhar Mal Jain, Rai Sahab Ulfat and Sh. Amrit Lal Jain as its partners. Vide subsequent partition among the aforesaid partners the suit property i.e the second and third floor on the eastern side of property bearing no. 1213 had come to the share of Pt. Mehboob Singh and Lala Ulfat Rai Jain. After the the death of Pt

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Mehboob Singh, his legal heirs who were four in number had inherited the ownership rights and Shri Ulfat Rai is stated to have sold one half of his share in the property to the legal heirs of Pt. Mehboob Singh. One of the legal heirs of Pt Mehboob, Sh. Mehtab had sold his 1/4 undivided share to Smt. Krishna Devi and another legal heir had transferred his 1/4 undivided share to Smt. Sudha Jain who subsequently sold her share to Smt. Krishna Devi making her owner with respect to 1/2 share in the suit property. After the death of the third legal heir of Pt. Mehboob, Sh. Ranjit Singh, his legal heirs who are six in number are stated to have inherited the ownership right and two of his sons are arrayed as plaintiff no. 2 and 3 being the ones managing the affairs of the suit property.

4. The ownership rights of the fourth legal heir of Pt Mehboob, Sh. Bahadur Singh is inherited by his wife and two sons. His wife is arrayed as plaintiff no. 5 and one of his sons is plaintiff no. 1.
5. It is the case of the plaintiff that defendant no 1 being a tenant has raised illegal and unauthorized construction in the tenanted premises materially altering its structure. Defendant no. 1 is stated to have damaged the entire staircase from first to second floor and to have demolished the wooden gates on eastern and western side of the property and to have constructed one gate in the middle.
6. Further, as per the plaint defendant no. 1 has demolished the three rooms and one hall constructed at the second floor and converted

them into one single hall after also covering the open space. It is further the case that defendant no .1 has removed the tin shed on the third floor and demolished the WC which was open for common use on the same floor. The area of tin shed along with the open area available on the third floor is stated to have been converted into a big hall and construction of new pucca staircase for going to the roof of third floor is also complained of.

7. Plaintiff is aggrieved by the illegal construction activities undertaken by defendant no. 1 at the tenanted premises which commenced on 23/04/2007, without the consent of the landlord. It is the case of the plaintiff that the construction activities so carried out by defendant no. 1 have completely changed the shape and structure of the tenanted premises and hence the plaintiff claims to be entitled to the reliefs claimed for.

Case of the defendants as per the Written Statement

8. Defendant no. 1 has contested the suit by filing Written Statement raising Preliminary Objections that the present suit of the plaintiffs is without any Cause of action. Defendant no. 1 has denied changing the shape and structure of the tenanted property or of having carried any illegal construction thereupon. It is contended that roof of the second floor and the WC built upon the stairs had fallen on 16.02.2007 and the said structure was in dilapidated condition being very old and therefore the construction activity was well under the purview of 'repairs' under the DMC Act and as such

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no permission from either the landlord or the MCD was required for that purpose. Further, it is stated that plaintiffs no. 2, 3 and 5 are not recognized as the landlords.

9. Defendant no. 2 has contested the suit by filing a Written Statement raising Preliminary Objections that the present suit of the plaintiffs is barred under S 477/478 DMC Act. It is stated that on site inspection it was found that the roof of third floor had been laid at the same level as it was original and that the mummy has been removed and the owner has constructed staircase in place of mummy leading to the roof of third floor. It is further stated that demolition order dated 12/03/2007 was passed and the roof at the third floor which was laid above the original level was removed and now it is laid at the original level, which is permissible under Building Bye Laws 6.1.1, as such the suit is not maintainable.

Replication

10. The plaintiffs have also filed replication wherein contents of the written statement are denied in so far as they are contrary to the plaint. Contents of the plaint were reiterated and reaffirmed.

Issues

11. On the basis of pleadings of the parties, following issues were framed by the Ld. Predecessor on 12/11/2010.

- (i) *Whether the suit is barred under the provisions of S 477/478 DMC Act, 1957? OPD*
- (ii) *Whether the present suit is filed without cause of action? OPD*
- (iii) *Whether plaintiffs are entitled to a decree for permanent injunction as prayed for in para (a) of prayer clause? OPP*
- (iv) *Whether the plaintiff is entitled for decree of mandatory injunction as prayed for in para (b) of prayer clause? OPP*
- (v) *Relief*

Plaintiff's evidence

12. Plaintiff has got himself examined as PW-1, Summoned witness Shri Shyam Sunder from the office of North Delhi Municipal Corporation, House Tax Department, Kashmere Gate, Delhi was examined as PW-2, Summoned witness Sh. Parveen Kumar Rana, UDC from the office of Sub Registrar-1, Kashmere Gate, Delhi as PW-3 and Advocate Shri Vinod Kumar (Local Commissioner) as PW-4.

PW-1 tendered his evidence by way of affidavit Ex.PW1/A and relied upon the following documents:-

- (i) Ex.PW1/1 : Site Plan
- (ii) Mark A : Copy of Sale Deed dated 29.03.1993.
- (iii) Ex.PW1/3 : Certified copy of Partition Deed dated

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25.03.1954 in Urdu.

- (iv) Ex.PW1/4 : English Translation of Sale Deed in Urdu.
- (v) Mark C : Notice dated 08.05.2007.
- (vi) Ex.PW1/6 : Reply of notice dated 08.05.2007.
- (vii) Ex.PW1/7 : LC Report.
- (viii) Ex.PW1/8(colly) : Postal receipts in respect of legal notice.
- (ix) Ex.PW1/9 : Certified copy of the Sale Deed of whole property dated 23.10.1929.
- (x) Ex.PW1/10 : English translation of Sale Deed dated 23.10.1929.
- (xi) Mark B (colly) : Eight Rent Receipts.
- (xii) Ex.PW1/19 : Death Certificate of Padmawati Jain.
- (xiii) Ex.PW1/20 : Death Certificate of Ranjeet Jain.
- (xiv) Ex.PW1/21 : Death Certificate of Mehtab Singh Jain.
- (xv) ExPW1/22 : Death Certificate of Bahadur Singh.
- (xvi) Ex.PW1/23 : Death Certificate of Sh. Daryao Singh Jain.
- (xvii) Ex.PW1/24 : Death Certificate of Smt. Chaman Kali.

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PW-1 was cross examined at length .

PW-2 brought on record the following documents:-

- (i) Ex.PW2/1(OSR) : Site plan of the property bearing No. 1213 to 1216, Chandni Chowk, Delhi-110006.
- (ii) Mark A : Photocopy of Sale Deed dated 11.06.1991.
- (iii) Mark B : Carbon copy of a mutation letter dated 19.07.1991.
- (iv) Mark C : Photocopy of Trust Deed dated 14.04.1986.

PW-3 brought on record the following documents:-

- (i) Ex.PW3/1 : Sale Deed dated 02.04.1993.

PW-4 is the Local Commissioner who proved on record the following documents:-

- (i) ExPW4/1 : Report of Local Commissioner.

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- (ii) Ex.PW4/2(colly): 48 photographs along with negatives from page 4 to 20 of report of Local Commissioner.
- (iii) ExPW4/3 : Handwritten draft report bearing signatures of PW-4 at point B.

Thereafter, plaintiff's evidence was closed on 02.04.2018 vide separate statement of Ld. Counsel for the plaintiff recorded in this regard and the matter was listed for recording of defendant's evidence.

Defendant's evidence

13. Shri Bhagwan Bansal, the Vice President of Defendant No.1 was examined as DW-1. DW-1 tendered his evidence by way of affidavit Ex.D1 and relied upon the following document:-

- (i) ExDW1/1 : Original copy of Resolution.

DW-1 was duly cross examined at length.

Thereafter defendant's evidence was closed vide separate statement of Vice President of the defendant No.1 and the matter was listed for final arguments.

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14. I have heard final arguments on behalf of the parties at length and the judicial record has been carefully perused.

The Issue-wise findings are as follows:-

ISSUE NO.1

Whether the suit is barred under the provisions of S 477/478 DMC Act, 1957? OPD

15. This issue was treated as preliminary issue vide order dated 12.11.2010 and it has been decided as per order dated 24.01.2014 wherein it was held that the suit is not barred under S. 477/478 DMC Act, hence this issue stands already decided in favour of the plaintiff.

ISSUE NO.2 and 3

2. Whether the present suit is filed without cause of action? OPD

3. Whether plaintiffs are entitled to a decree for permanent injunction as prayed for in para (a) of prayer clause? OPP

16. These two issues can be decided together. Issue no 2 was treated as preliminary issue vide order dated 24.01.2014 wherein it was decided to be tried alongwith the other issues. The cause of action is a bundle of facts, the plaintiffs have stated that they are

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the owner and landlord of the suit property which is comprising of 02nd and 03rd floor in the tenancy of defendant no. 1. As per the plaintiffs the tenanted portion consists of 03 rooms and 01 hall on the 02nd floor which as per the plaintiff, defendant no 1 has converted into 01 big hall by demolishing the rooms and hall. Open space is also stated to have been covered by defendant no. 1 on the 02nd floor and thereby the shape and structure of the 02nd floor has been completely changed. The plaintiff has further stated that defendant no.1 has changed the entire staircase from 01st floor to 02nd floor and has also changed the wooden gate. Earlier there were two separate gates and defendant no. 1 by demolishing both the gates has made one gate in the middle of the suit property.

17. The staircase from the second floor to third floor is stated to have been damaged. The tin shed which formed part of the tenancy is also stated to have been removed. WC on the third floor which was for common use is also stated to have been demolished. After demolishing the WC and tin shed, a big hall has been constructed by covering the area, tin shed and the open space.

18. As per the plaint, there was no staircase from 03rd floor to its roof and concrete staircase was in process of construction by defendant no. 1 to reach to the roof of 03rd floor (which seems to have been wrongly mentioned as roof of 04th floor in the plaint). The construction of the staircase was stated to be in process when this suit was filed. Defendant no.2 was stated to be in collusion of

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defendant no.1. The plaintiff has sought decree of permanent injunction against the defendant no. 1 from raising any illegal and unauthorized construction in the suit property.

19. Defendant no 1 has stated that no unauthorized construction has been raised and that the tenanted portion is in original position. Further it is stated that the staircase from the first floor to third floor were damaged and have been repaired by affixing stone slabs. The roof of second floor and the WC built on the stairs due to its dilapidated condition had collapsed on 16.02.2007 and have been re-erected. It is further the defence that the aforesaid re-erection is covered within the scope of 'repairs' permissible under the Municipal bye-laws. Defendant no 1 had to carry out the necessary repairs since the plaintiffs had failed to repair it.

20. Although defendant no. 1 has denied relationship of landlord and tenant between the plaintiff and defendant no 1 but this controversy need no deliberation in as much as defendant no. 1 during the stage of evidence has admitted plaintiffs as the landlord and have not examined any witness who as per them could be the landlord. On the other hand, the history of vesting of title as that of landlord has been sufficiently explained in the plaint and the evidence of PW1 coupled with documents. As such, it is held that the plaintiffs are landlords qua defendant no. 1 and thus have the locus standi to institute the present suit.

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21. The plaintiffs have exhibited site plan as Ex. PW 1/1 to show that property No. 1213 to 1216, Main Road, Chandni Chowk, Delhi is the same property as was shown in this site plan.
22. There is no writing with respect to creation of tenancy and extent of tenanted premises. No witness has been examined to prove as to what was the extent of the tenanted premises while the same was let out. Ex PW 1/1 is a photocopy of the site plan. The maker of this site plan has not been examined. In the site plan it is stated to be property of Sh.B Mehatab Singh, Lala Ranjit Singh and Lala Daryao Singh, who as per the plaintiffs were predecessor in interest of the plaintiffs . Therefore, this site plan was not prepared at the instance of the plaintiffs and has therefore not been legally proved.
23. At this stage, it is also pertinent to mention that defendant no. 1 by obtaining permission in terms of order dated 22.09.2017 filed a site plan of the suit property wherein the suit property has been shown as having wooden partitions in the shape of cabins on second floor and a hall and a small room on third floor.
24. Though the site plan was permitted to be filed considering the same to be a necessary document but DW1 while adducing evidence has not made any reference to the said site plan nor it has been exhibited or proved.

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25. The plaintiffs have filed a survey report conducted by MCD as it was then, which pertains to the period April 1972, wherein 2nd floor has been described as one hall with partition and third floor has been described as one hall, one bath and one kitchen.
26. Plaintiffs have also examined Sh. Shyam Sundar as PW 2 who is the Zonal Inspector from the House Tax Department, NDMC. He has brought the summoned record wherefrom site plan has been produced which is Ex. PW2/1 along with photocopy of sale deed dated 11.06.1991. This site plan which has been produced at the instance of plaintiff shows that there are halls on the second and third floor.
27. A civil suit in the absence of any direct evidence is decided on balance of probabilities, in the present case there is no direct evidence with respect to the extent of tenanted premises at the time of commencement of tenancy. On the other hand, the municipal records atleast since 1972 describes the tenanted premises as hall on both the floors. Even if it is assumed that tenanted premises consisted of three rooms and a hall on the second floor and the same has been removed and converted into one big hall then also it would have been done before 1972 and a suit filed in the year 2007 cannot be permitted to cure/ rectify the said change of construction. The premises since the year 1972 has not changed because the extent of premises stated by the plaintiff after

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conversion into one hall on the second floor is already in existence for the last many years in the municipal record. As against the municipal record which the plaintiffs do not challenge, the oral testimony of PW 1 cannot be accepted. The status report filed by the MCD does not state any unauthorized construction. The report of local commissioner Ex. PW4/1 dated 14.06.2007 does not suggest any unlawful construction. The premises admittedly are very old. There is no record or averment by the plaintiffs that they have carried out repairs periodically or at any time. Decay is a natural consequence and the dilapidated structure is bound to show cracks. Change of stairs or change of gates is not a material alteration.

28. Defendant no. 2 has not issued any show cause notice nor has taken any action against unauthorized construction with respect to the suit premises. Re-laying of roofs is permitted under the Building Bye-laws 6.1.1. Perusal of photographs Ex. PW4/2 filed alongwith report of the Local Commissioner does not show any illegal construction. The status report filed by defendant no. 2 dated 13.06.2007 states that roof of third floor has been at its original level and mumty has been removed in which place staircase has been constructed.

29. In the status report dated 17.09.2009 filed by defendant no. 2 it has been stated that there is no staircase to go to the roof of the

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third floor and only wooden/ temporary stairs are used to reach the roof of third floor.

30. From the above discussion, it is held that the plaintiffs have failed to prove that tenancy portion was comprised of description as described in the plaint and the same has been converted into one hall in the year 2007. The roof of third floor is at the same level as it was originally. There are no concrete stairs on the third floor to go to its roof. The status report filed by the defendant no.2 have not been contradicted by the plaintiffs. Survey report Ex PW1/X and site plan Ex. PW1/1 contradict the extent of tenancy portion stated by the plaintiffs in the plaint. Thus, no rights of the plaintiffs have been proved to be infringed by defendant no. 1 for justifying grant of permanent injunction in favour of the plaintiffs.

31. To decide issue no.2 only the averments made in the plaint are to be seen wherein only cause of action has been pleaded. Therefore, issue no. 2 is decided in favour of the plaintiffs. However, issue no. 3 is decided against the plaintiffs as they have failed to prove that defendant no. 1 has ever indulged in raising illegal construction.

32. ISSUE NO. 04

Whether the plaintiff is entitled for decree of mandatory injunction as prayed for in para (b) of prayer clause? OPP

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33. For the reasons stated above while discussing issue no. 3, plaintiffs are held not entitled to decree of mandatory injunction as plaintiffs have failed to prove that the original tenanted premises consisted of description as given in the plaint and the present existing structure has been constructed by defendant no. 1 by removing the original structure.

34. Hence, this issue is decided against the plaintiffs.

35. **Relief**

In view of the findings on issue no 3 and 4, the present suit stands dismissed.

36. No order as to cost.

37. All pending applications are disposed off accordingly.

38. Decree sheet be prepared accordingly.

39. File be consigned to record room after due compliance.

Announced through CISCO Webex

Today on 08.06.2020



(TANIA SINGH)

Civil Judge-01, Central,

Tis Hazari Courts/Delhi