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**Devi Ram Vs. Dewan Singh and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/703165

**Court** : Delhi

**Decided On :** Sep-01-1995

**Reported in** : 59(1995)DLT820

**Judge** : Manmohan Sarin, J.

**Acts** : Code of Civil Procedure (CPC), 1908 - Sections 115

**Appeal No.** : Civil Revision Appeal No. 526 of 1995

**Appellant** : Devi Ram

**Respondent** : Dewan Singh and ors.

**Advocate for Pet/Ap.** : V.P. Katiyar and; Ashok Aggarwal, Advs

**Judgement** :

**Manmohan Sarin, J.**

(1) The petitioner has filed this revision petition against an order dated 27th June, 1995 passed by Ms. Indermeet Kaur Kochhar, ADJ. in Suit No. 59/95 titled Devi Ram v. Dewan Singh and Others, whereby the respondent No. I was allowed to proceed with the construction in the house bearing No. 1309/90, Shanti Nagar, Tri Nagar, Delhi hereinafter referred to as the suit property. The impugned order was passed on an application under Section 151 Civil Procedure Code . of the respondent. The learned Additional District Judge while fixing a date for reply to

the said application, permitted the respondent No. 1 to proceed with construction.

(2) On 11th July, 1995 when this petition had come up for admission, this Court had directed the parties to maintain status quo with regard to the property and stayed the operation of the impugned order dated 27th June, 1995. Counsel for the respondent has filed reply to the revision petition together with the documents relied in support of his case. As the dispute concerned the members of a family, viz. petitioner son on the one side and father and brothers of petitioner on the other side, the matter was adjourned twice to enable the parties to reach a settlement, which would have been in the interest of family. However, it was not possible for the parties to come to a settlement. The arguments were heard on 30.8.1995 and order reserved.

(3) The facts leading to the filing of the present petition may be noted.

(I)The petitioner filed a suit for partition, declaration and injunction claiming that the suit property is a joint Hindu family property. The petitioner being in occupation of the part of the property on the ground floor had filed Along with the suit an application under Order Xxxix Rules 1 and 2 Civil Procedure Code . seeking a restraint order against the respondents from dispossessing him from the part of the suit property in his occupation. He further prayed that the respondents be restrained from carrying out any construction during the pendency and till disposal of this suit. (ii) The suit had come up before the Vacation Judge on 17.6.1995, when the respondents vide an ex parte order were restrained from dispossessing the petitioner without the due process of law. The respondents undertook not to dispossess the petitioner and the stay order was extended on 23.6.1995. The petitioner, in the meanwhile, also moved the Court with the allegation that the respondents had damaged the premises in his occupation. A Local Commissioner was appointed to assess the damage. (iii) The petitioner's case is that the property in suit is joint family property, having been purchased out of the joint funds and earnings from ancestral agricultural lands. The petitioner claimed that his grandfather late Shri Niader Singh had sold agricultural lands and distributed the proceeds to his sons including respondent No. 1. The respondent No. 1 out of the sale proceeds had constructed the present house on a plot that had been

purchased out of the joint funds earlier, in his name. The respondent No. I refutes the allegations and states that he is the sole owner of the suit property, which is a self acquired one. He relies on the sale-deed in his favor. According to the respondent No. 1, the petitioner as a son had been simply allowed to reside by him in a room on the ground floor. The respondents deny that the suit property is a joint family property.

(4) Counsel for the petitioner assailed the impugned order on the ground that the Trial Court had illegally granted permission to the respondents to carry on the construction which would affect his rights. He further urged that unauthorized construction was being carried out. There was no sanctioned plan. In the garb of repairs the roof of the portion which was in his occupation had been deliberately damaged by the respondents. Counsel for the respondents refuted these allegations stating that the petitioner had no right in the premises and the respondent No. 1 as the owner, was fully entitled to raise the construction and increase the accommdation, which was bona fide required for other members of the family. Counsel for the respondents stated that the construction was almost complete and the shuttering had been fixed. Further the rainy season would jeopardize the existing construction. It was urged that the petitioner did not have a prima facie case and the balance of convenience was against him. The petitioner himself has a house in Uttam Nagar, Delhi and was trying to exploit the situation by obstructing the requirements of the rest of the family. The respondent it is stated, had approached the Court as a law abiding citizen to obtain permission. Counsel for the respondents candidly stated that the respondent No. 1 had applied to Municipal Corporation of Delhi for sanction of plans vide Receipt No. 427064 dated 2.8.1995 and as on date there was no sanction.

(5) It is not necessary for me for the purpose of this revision petition to decide on the respective contentions raised by the petitioner and the respondent. The revision petition is being disposed of on a very short ground. The Trial Court had allowed the application of the respondent for carrying out the construction as per the plan filed by the respondent in Court. This had been done white time was granted to the petitioner to file a reply to the respondents' application. The Trial Court no doubt acted with material irregularity in permitting construction, while it

was still to dispose of the application of the respondents under Section 151 Civil Procedure Code . for being permitted to construct. This was specially so when the Court had not finally disposed of the application under Order Xxxix Rules 1 and 2 Civil Procedure Code . in which the petitioner had also made a prayer for restraining the respondents from carrying out any construction. The Trial Court has not recorded any finding with regard to the petitioner having a prima facie case or not. The impugned order does not also disclose any finding in this regard by the Trial Court in favor of the respondent either. The impugned order dated 15.7.1995 is accordingly set aside.

(6) The Trial Court would consider and decide the application under Section 151 Civil Procedure Code . moved by the respondent for which reply was called for from the petitioner. The said application would be considered by the Trial Court along with the petitioner's application under Order Xxxix Rules 1 and 2 Civil Procedure Code . which contains a prayer for restraining the respondents from carrying out construction. The parties shall maintain status quo, pending the disposal of the respondents' application under Section 151 Civil Procedure Code . for permission to construct and the petitioner's prayer in the application under Order Xxxix Rules 1 and 2. The petition is allowed and disposed of with the above directions.

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