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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON: 23.10.2009

+ CS (OS) 520/2008

CHANDER MOHAN GUPTA & ANR. Plaintiffs
Through: Mr. Saurabh Tiwari, Advocate.

versus

SMT. SWARAN BHALLA Defendant
Through: Ms. Maninder Acharya, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

HON'BLE MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% The plaintiff in this case sues the defendants for a permanent injunction restraining the defendant, her agents, employees etc. from alienating or creating third party rights or interest for subletting or handing over possession of F-3, Connaught Place, New Delhi to any third party.

2. The brief facts necessary to decide the case are that plaintiffs claimed to be co-owners of the suit property. The first plaintiff claims to be 50% shareholder and second plaintiff being the karta of B.P. Jain (HUF) is the co-owner of 1/18th share in the suit

property. It is stated that suit for partition in the said suit property is pending in the file of Additional District Judge and in this Court, being CS (OS) 903/2007. The suit averments further are that a tenancy was created in favour of the defendants' father, i.e., Sardar Amrik Singh, in August, 1948 and upon his demise, his widow Smt. Vidyawati was recognized as tenant. The plaintiffs allege to have filed a petition under Section 14 (1) (b) against the defendant for eviction on the ground of sub-letting. The said petition was dismissed by the Additional Rent Controller on 03.10.1998.

3. It is stated that the defendant is co-tenant with Smt. Vidyawati, who had been carrying on business from the said property under the style "Fitness Store", which was concerns with selling tread mills, massage chairs etc. The suit further alleges that due to slump in the business, the store remained closed and that sometime in March, 2008, the plaintiffs learnt that the defendant was threatening to part with possession of the property. In this circumstances, the injunction claimed has been sought.

4. The defendant does not deny the essentials as regards her co-tenancy and her carrying on business under the style "Fitness Store". It is, however, alleged that her father late Sardar Amrik Singh used to carry on business as sole proprietor of M/s Leatherite and that the defendant jointly inherited that business with her late mother Smt. Vidyawati. It is contended that the defendant never had any intention, nor would create any interest or sub-tenancy in respect of the suit property, which continues to be occupied by her. It is submitted that the defendant concern "M/s Leatherite" has entered into a Memorandum of Understanding with M/s Catmoss Apparels for a initial period of three years extendable by like term twice for purely business purposes whereby the said M/s Catmoss would be stocking and keeping its goods. The said

Memorandum of Understanding has been placed on record. Some of the terms of the said document dated 15.03.2008 are relevant for the present purposes, they are extracted as follows: -

“2. That M/S. Leatherite shall be in the exclusive possession, control and supervision of the showroom and the Catmoss will have no right, title or interest of any nature whatsoever in the showroom of M/S. Leatherite. They have further agreed that the Catmoss shall not claim any right or interest whatsoever in the tenancy right of the said showroom of M/S. Leatherite.

3. That M/S. Leatherite will keep and sell the garments manufactured by M/S. Catmoss Apparels only.

4. That M/S. Leatherite will use their own TIN/VAT registration number and will be responsible for complying with all the legal requirements in this regard.

6. That M/S. Leatherite will keep the goods in good condition.

7. That M/S. Leatherite will make timely payment of their dues against goods to M/S. Catmoss Apparels.

12. Looking into the quality of the product and brand image, it is assumed that M/S. Leatherite shall be able to make a sale of Rs.1.32 Crores per annum and in case the sale fell below this, M/S. Leatherite may be compensated by an additional discount of 10% to 20% on future purchases.

13. M/S. Leatherite has agreed to issue 12 blank cheques to M/S. Catmoss Apparels to enable them to en-cash the same against the payments for stock supplies on credit basis.

14. This agreement is for the period of 3+3+3 = 9 years.

15. Lock-in-period is for first 36 months and during this period none of the parties can terminate this agreement and M/S. Catmoss Apparels can only terminate this agreement at their sole consent after expiry of this Lock-in-period by serving 60 days notice to M/S. Leatherite.

16. That Catmoss Apparels will supply carry bags, software & billing stationery for the use of showroom at their cost.

17. That all the credit card commission shall be borne by M/S. Catmoss Apparels."

5. It is submitted that the above Memorandum of Understanding does not amount to creation of tenancy as the defendants concerned M/s Leatherite continue to be in exclusive possession and the arrangements only suggest that it would stock the goods and products of M/s Catmoss Apparels.

6. The Court has considered the submissions of the parties and the averments. The defendant does not deny the tenancy. She also confirms the manner in which she became the tenant of the premises. The only question is whether the plaintiffs' apprehensions that the arrangement arrived at with Catmoss amounts to sub-tenancy.

7. The conditions of the contract entered into between M/s Leatherite - concededly the defendant's proprietary concern on the one hand and M/s Catmoss on the other clarifies specifically by clause-2 that the defendant would be in exclusive possession, control and supervision of the showroom and the Catmoss would have no right, title or interest of any nature whatsoever. It is also crucially agreed that Catmoss would not claim any right or interest whatsoever in the tenancy rights of M/s Leatherite (the sole proprietorship concern of the defendant).

8. The Court is of the opinion that the above conditions contained in the Memorandum of Understanding are sufficiently clear to disclose that the defendant is not intending to create any interest in the property. Nevertheless, in order to allay any apprehensions on this score, the defendant is hereby restrained from creating in any manner sub-tenancy, rights or interest in favour of M/s Catmoss Apparels or any other party in respect of the suit property.

9. The decree for permanent injunction restraining the defendant in that regard is hereby issued.

The Suit is decreed in the above terms.

All pending applications are also disposed of. No costs.

**S. RAVINDRA BHAT
(JUDGE)**

OCTOBER 23, 2009
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