

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

+ CM (M) No.1024/2009

% Date of decision: 05.10.2009

Sh. Sudhir Chaudhary Petitioner

Through: Ms. Amrit Kaur Oberoi with Mr. D.S.
Vohra, Advocates for the Petitioner.

Versus

Sh. Jitender Singh @ Sunny ... Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. Petition under Article 227 of the Constitution of India is preferred with respect to an order of the Trial Court dismissing the application of the petitioner (defendant in the suit) under Order I Rule 10 of CPC. The respondent has sued the petitioner for the relief of possession of immovable property, mesne profits, injunction etc. A perusal of the written statement filed by the petitioner in the suit and copy of which has been filed, shows that the defence of the petitioner is that he is the owner of the property and has paid valuable consideration therefor. It is stated that "defendant through his father has got possession of the property way back in the year November, 1989 in his own right as well as by doctrine of adverse possession". The defendant has in the written statement in the preliminary objections also taken a plea of mis-joinder and non-

joinder but the same is not with respect to the persons sought to be impleaded now but with respect to others. The petitioner filed the application under Order I Rule 10 of CPC for impleading his mother, brother and sister being the other natural heirs of the father as parties to the suit. The counsel for the petitioner has contended that since the petitioner in the written statement pleaded that he had acquired possession of the property from his father and since the father has left other heirs also, they are also necessary and proper parties to the present suit.

2. A perusal of the application under Order I Rule 10, which has been dismissed further shows that it was the categorical case of the petitioner therein that in fact it is the petitioner only who is in possession of the property in respect of which suit has been filed and the other heirs of the father are stated to be residing at different property. The Trial Court has dismissed the application, inter alia, holding that since the petitioner alone is in possession of the property, the suit against the petitioner alone was maintainable. The counsel for the petitioner even today on enquiry states that though the other heirs are not residing in the suit property but are in possession through the petitioner. The counsel for the petitioner however subsequently stated that she is not authorized to make a statement in this regard.

3. The written statement of the petitioner does not state that besides the petitioner anyone else is in possession or claims rights in the property. The plaintiff is the *dominus litus*. If the plaintiff, finding petitioner in possession, elects to sue the petitioner only for the relief of possession, he cannot be compelled to litigate with others.

4. No error is found in the order requiring this Court to intervene in exercise of its power under Article 227 of the Constitution of India. The three Judges Bench of Supreme Court in ***Sadhana Lodh Vs. National Insurance Company Ltd.***, 2003 (3) SCC 524 has held that the supervisory jurisdiction conferred under Article 227 is confined only to see whether an inferior court has proceeded within its parameters and not to correct even an error apparent on the face of the record, much less of an error of law. This Court is not to act as appellate Court or to review or reweigh the material on which the inferior court has passed the order or to correct errors of law in the decision. Accordingly, the petition is dismissed.

+CM No.13563/2009 (U/s 151 CPC for Stay)

Upon dismissal of the petition under Article 227 of the Constitution of India, this application has become infructuous and is disposed of.

+CM No.13564/2009 (U/s 151 CPC for Exemption)

Allowed subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

October 05,2009
gsr