

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

+ FAO 314/2010

Decided on 27.10.2010

RP BAJAJ

..... Appellant

Through: Mr.Pramod Ahuja, Adv.

versus

SHEELA KAPOOR AND ANR

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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?

: MOOL CHAND GARG, J

C.M15205/2010(exemptions)

Exemptions allowed subject to just exceptions.

FAO 314/2010

1. The short point involved in this appeal is as to whether the orders passed by the learned ADJ on 03.08.2010 in Suit No.172/2009 needs any interference by this Court.
2. The relevant observations made in the above-said impugned order are reproduced hereunder:

“3. The rival contentions of parties qua the entitlement of the suit property will have to be tackled on trial. The decree in favour of defendant No. 2 cannot be brushed aside lightly in the face of his representation in the Written statement. The stands of plaintiff in the recovery suit pending before Ld. Civil Judge and the one before this court seem to be diametrically opposite and irreconcilable. Before making the dent in the defence of defendants plaintiff will have to stand on his legs and establish prima facie case for the 3 temporary reliefs.

4. Interestingly enough plaintiff does not claim to have filed the suit for specific performance of agreement dated 02.06.1975 or filing a counter claim in the recovery suit initiated by Smt. Kaushyala Devi. Apparently he did not put the agreement purportedly in respect of suit property, to enforcement. He cannot therefore, choose to restrain

defendant No. 2 from representing himself as the owner of suit property on the basis of Sale Deed dated 30.10.2001. Plaintiff being in physical possession of the suit property, at the same time cannot be forced out except following the due process of law for which no proceedings seems to have been initiated.

5. Having been bestowed the ownership rights of property by hard fought litigation, defendant No. 2 cannot be deprived of the fruits. He will be gravely inconvenienced in case any embargo is put on his so acquired rights. Plaintiff on the other hand would not be prejudiced or inconvenienced by such assertion of defendant No. 2.

6. In view of the above, application of plaintiff is partly allowed and defendant No. 2 is restrained from interfering in the physical possession of the plaintiff of the suit property and from dispossessing him without following the procedure prescribed by law.”

3. It is submitted by the appellant that the appellant is in possession of the suit property as a tenant. In fact, the appellant is aggrieved of an agreement between the predecessor of R-1 and R-2 and of a decree which is stated to have been obtained by respondent No.2 which he submits was a policy decree. From the very fact that the possession of the tenant has been protected and the second respondent who now claims ownership of the suit property on the basis of a decree in his favour has been restrained from dispossessing the appellant from the suit property, it is apparent that at this stage, in the absence of any suit filed by the appellant for specific performance of the agreement on the basis of which he claims ownership in the suit property and the rights of the parties are yet to be crystallized and necessary protection having been granted to the appellant by the learned ADJ to protect his interest, I find no reason to interfere with the discretion exercised by the ADJ while passing the impugned order

4. The appeal is accordingly dismissed.

5. No costs.

C.M.15208-09/2010

Dismissed as infructuous.

MOOL CHAND GARG,J

OCTOBER 27, 2010/ 'anb'