

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

+ **CM(M) No.1601/2007 & CM A. No.2119/2008 (u/S 151 for Stay)**

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Date of decision: 16th February, 2010

BHARAT BHUSHAN SABHARWAL

..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr.
Sanjay Chhabra, Advocate.

Versus

RAMA BHASIN & ORS.

..... Respondents

Through: Mr. Y.P. Bhasin, Advocate.

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. This petition under Article 227 of the Constitution of India has been preferred by one of the defendants in the suit filed by the respondent No.1 plaintiff and pending before the court of the Civil Judge, Delhi and with respect to the order dated 13th July, 2007 dismissing the application of the petitioner/defendant under Order 7 Rule 11 of the CPC. This Court vide order dated 12th February, 2008 stayed further proceedings before the Civil

Judge, Delhi. Subsequently vide order dated 29th April, 2009 which continues to be in force, the Learned Civil Judge, Delhi was permitted to proceed with the matter but was directed not to pass final judgment.

2. The respondent No.1/plaintiff instituted the suit claiming that she and Major Dharam Bhushan Sabharwal were the only children of one Shri Sewa Ram Sabharwal and Smt. Kaushayala Sabharwal; that on demise of Smt. Kaushayala Sabharwal, Shri Sewa Ram Sabharwal remarried defendant No.1 in the suit namely Smt. Savitri Sabharwal and from which marriage the defendants No.2,3&4 and of which petitioner is one were born; that Major Dharam Bhushan Sabharwal was not married and had no children and died leaving the respondent No.1/plaintiff as his sister and only natural heir; it was claimed that Major Dharam Bhushan Sabharwal had also executed a Will bequeathing his assets to the respondent No.1/plaintiff. The suit was filed only with respect to the one of the said assets being the property No.93, Uday Park, New Delhi – 110 049 (excluding the first floor thereof which was stated to have been sold off by Major Dharam Bhushan Sabharwal in his life time). It is the case of the respondent No.1/plaintiff in the plaint that the said property was in possession of Major Dharam Bhushan Sabharwal and after his death is lying locked; that the defendants though having no right to

the said property being not the legal heirs of Major Dharam Bhushan Sabharwal were trying to forcefully occupy the said property. The respondent No.1/plaintiff thus sued for declaration that she, on demise of Major Dharam Bhushan Sabharwal, was the owner of the said property and for injunction for restraining the defendants from entering the said property and from interfering with the respondent No.1/plaintiff entering and occupying the said property. The petitioner/defendant filed an application under Order 7 Rule 11 of the CPC contending that the respondent No.1/plaintiff in the garb of the reliefs claimed in the plaint was seeking possession of the property and was bound to pay court fees on *ad valorem* basis.

3. The respondent No.1/plaintiff filed a reply to the said application denying that the suit had not been valued correctly for the purpose of court fees and jurisdiction or that appropriate court fees had not been affixed on the plaint. It was further stated in the said reply that at the time of institution of the suit the said property was in possession of a third party i.e. Shri M. Sundaram who was looking after the affairs of Major Dharam Bhushan Sabharwal and the said Shri M. Sundaram had, after the institution of the suit delivered the possession of the property to the respondent No.1/plaintiff.

4. The Learned Civil Judge has in the short order impugned in this petition observed that to ascertain the cause of action only the plaint and the supporting documents have to be looked into and not the written statement and further held that on a reading of the plaint, it discloses a cause of action as the suit is valued properly as per the averments in the plaint.

5. The petitioner has in the petition preferred before this Court though not denying that the respondent No.1/plaintiff since the institution of the suit has been put into possession of the property pleaded the aforesaid Mr.M. Sundaram to be in collusion with the respondent No.1/plaintiff. It is also pleaded that the respondent No.1/plaintiff is in fact not the sister of Major Dharam Bhushan Sabharwal and claimed that he was also born out of the second marriage of Shri Sewa Ram Sabharwal with defendant No.1. It is also pleaded that the respondent No.1/plaintiff by way of the suit is seeking a declaration of title to property and the said declaration ought to be appropriately valued. The senior counsel for the petitioner at the time of hearing has further contended that the relief of injunction claimed in the suit is consequential to the relief of declaration and thus the plaint cannot be valued as in a suit for declaration simplicitor and ought to have been valued appropriately and is liable to be rejected if not so valued appropriately.

Reliance is placed on *Renu Nagar Vs. Anup Singh Khosla* 156 (2009) DLT 723, *Automatic Electric Limited Vs. R.K. Dhawan* 57 (1994) DLT 49 & *M/s Maharaji Educational Trust Vs. Punjab & Sind Bank* 2006 (127) DLT 161.

6. Per contra, the counsel for the respondent No.1/plaintiff has contended that as far as the relief of declaration claimed in the suit is concerned, the same is within the ambit of Article 17(iii) of Schedule II to the Court Fees Act and as far as the relief of injunction is concerned, the relevant provision is contained in Section 7 (iv) (d) and the relief of injunction is independent from the relief of declaration and not consequent to the relief of declaration. The respondent No.1/plaintiff has in the plaint valued the relief of declaration for the purposes of court fees at Rs.19.50 and at Rs.130/- for the reliefs of injunction.

7. I may notice that the arguments raised before this Court qua valuation are different from the ground on which the application under Order 7 Rule 11 of the CPC was filed. The only ground therein was of the relief claimed in the suit being in fact of possession and being required to be so valued. The impugned order is also in terms thereof only. No error can be found in the order of the Learned Civil Judge, Delhi qua the said objection. The plaint

cannot be read as for the relief of possession. In this regard, it is significant that the petitioner/defendant also in the application under Order 7 Rule 11 of the CPC did not claim to be in possession of the property and/or did not expressly take a plea that the suit for declaration alone was not maintainable under Section 34 of the Specific Relief Act. The case with which the respondent No.1/plaintiff approached the court was that on the demise of Major Dharam Bhushan Sabharwal, she being his only heir had become the owner of the property and the defendants were threatening to forcefully enter the same and/or interfering in the respondent No.1/plaintiff entering the same. The title to a property, in law, devolves and/or is deemed to devolve on the rightful heir on the very moment of the demise. No letters of administrations or probate of Will are necessary in the City of Delhi for devolution of title. Reference in this regard may be made to ***Behari Lal Ram Charan Vs Karam Chand Sahni*** AIR 1968 P&H 108, ***Rajan Suri Vs The State*** AIR 2006 Delhi 148 and ***Banwari Lal Charitable Trust Vs UOI*** MANU/DE/2575/2009. The respondent No.1/plaintiff, thus if the only heir of the aforesaid Major Dharam Bhushan Sabharwal, became the owner on the very moment the said Major Dharam Bhushan Sabharwal died. It is also the plea of the respondent No.1/plaintiff that Major Dharam Bhushan

Sabharwal was in possession of the said house as owner and as such the respondent No.1/plaintiff at the moment of the demise of Major Dharam Bhushan Sabharwal would also be deemed to be in possession of the property. In such eventuality the heir cannot be asked to claim the relief of possession. The only grievance of the respondent No.1/plaintiff was of the defendants in the suit disputing her title and on which account declaration was claimed and of interfering in her use and occupation of the property and on which account the relief of injunction was claimed. In fact the respondent No.1/plaintiff could have simply claimed the relief of injunction. A declaration is inherent in all claims for injunction in as much as without establishing a right or title, no injunction can be issued. The ambiguity if any in the plaint in any case is clarified by the subsequent admitted events of the respondent No.1/plaintiff having been put into possession of the property. It would be a travesty of justice to, in view of such circumstances hold that in spite of being in possession of the property, the respondent No.1/plaintiff is required to sue for possession and/or to pay court fees therein.

8. As far as the contentions raised by the petitioner/defendant No.1 before this Court are concerned, I do not find that the relief of injunction claimed by the respondent No.1/plaintiff was consequential to the relief of

declaration or that a simplicitor declaration would not have served the purpose of the respondent No.1/plaintiff. The two reliefs are thus found to be disjunctive and injunction is not found to be consequential to the relief of declaration so as to take away the relief of declaration from the ambit of Article 17(iii) of Schedule II to the Court Fees Act.

9. The judgments relied upon by the senior counsel for the petitioner are also not found to be apposite. In ***Renu Nagar*** (supra) the suit for mandatory injunction was found to be in fact a suit for possession and directed to be valued as such. The respondent No.1/plaintiff though in the prayer para (b) of the plaint in the present case has used the expression “mandatory injunction” but the relief claimed is not of mandatory injunction directing the defendants to do anything but a preventive injunction restraining the defendants from entering the property. When the defendants admittedly were/are not in possession of the property, the question of the respondent No.1/plaintiff seeking a mandatory injunction against them for delivery of possession does not arise. ***Automatic Electric Limited*** (supra) though laying down that the valuation for the purpose of jurisdiction cannot be fixed whimsically is in relation to a suit for injunction restraining infringement of trademark and passing off and is in a different context. The whole purpose

of Article 17 (iii) (supra) was to not burden the plaintiff who was entitled to a mere declaration, with *ad valorem* court fees leviable under the law if the consequent relief such as of possession was not necessary for granting complete relief to the plaintiff. In *M/s Maharaji Educational Trust* (supra) the reliefs claimed were found to be intended to defeat the claims of the bank against the plaintiff before the DRT and were as such ordered to be valued so. The said principles cannot be applied to the facts of the present case.

No ground is made out for interference under Article 227 of the Constitution of India. The petition is dismissed. The interim orders are vacated. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

February 16, 2010

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