

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.R.P. No.96/2015 & CM APPL.11374/2015 &
CM APPL.13328/2015 (stay)**

Decided on: 8th October, 2015

SANJEEV KAPOOR & ANR. Petitioners

Through: Mr. Randhir Jain, Advocate.

Versus

ANIL KUMAR Respondent

Through: Mr. Ajit Pratap Singh, Advocate.

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J. (ORAL)

1. This civil revision petition has been filed by the petitioner against the order dated 26.05.2015 by virtue of which the application of the present petitioner under Order VII Rule 11 CPC was rejected.
2. I have heard the learned counsel for the petitioner Mr. Randhir Jain. I have also gone through the impugned order. Mr. Jain, the learned counsel has contended that a suit for mandatory injunction was filed by the respondent, the father of the present petitioner in respect of certain portion of a property bearing No.1798, situated at

Ram Gali, Sohan Ganj, Subzi Mandi, Delhi-110 007. It is contended that the respondent was in fact seeking possession of the portion which was under the occupation of the present petitioner along with his wife and since the suit for possession has been filed under the guise of suit for mandatory injunction, ad valorem court fee had to be affixed keeping in view the market value of the suit property which is admittedly owned by respondent/ plaintiff but as against this, a fixed court fees has been paid on a nominal valuation. It has also been contended that the respondent/plaintiff is claiming damages/occupational charges @ Rs.10,000/-, however, he has not paid any court fees on the same.

3. I have considered the submissions made by the learned counsel for the petitioner. The learned Civil Judge has referred to judgments of this Court, especially on similar factual matrix where the Court has held that in case a plaintiff is seeking retrieval of possession of the suit property from any of his relations like son, daughter, etc. then in such an event a suit for possession is not necessary and a suit for mandatory injunction would suffice. The reason and the logic for doing so is that the relation between the parties is such

that essentially petitioners are is the licensee of the respondent/plaintiff. In the instant case, the petitioner No.1 is the son of the respondent who has filed a suit for mandatory injunction. The property is admittedly belonging to the father. The son along with his wife and child is living in the property only as a licensee. Since the father does not want son and his family to continue any more in the house, therefore, a suit for mandatory injunction seeking that the petitioners must be removed from the licensed premises, is sufficient. It is not necessary that he must file suit for possession. The delinquent son would obviously like his father to spend money on court fees for possession so that he is deterred from seeking his ejectment. Reliance in this regard is placed by the Trial Court on *Hasn Ali vs. Akbari Begum Akbari @ Hajjan 133 (2006) DLT*.

4. I fully agree with the reasoning given by the learned Civil Judge. Therefore, I find no infirmity in this order of the Court.
5. It may, further be pertinent here to mention that the respondent has also claimed damages at the rate of Rs.10,000/- and the Court has directed that the respondent/plaintiff will pay eventually the court

fees at whatever rate the damages are paid to him. Therefore, no advance court fee on the arrears of damage or at the rate of damages as claimed by the respondent is to be paid at this point of time.

6. I feel that the learned counsel for the petitioner has not been able to make out any case for jurisdictional error or illegality or impropriety in the impugned order which may persuade this Court to set aside or interfere with the impugned order.
7. Accordingly, the revision petition is dismissed as being without any merit.
8. Pending applications also stand disposed of.
9. File be consigned to record room.

V.K. SHALI, J.

OCTOBER 08, 2015

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