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

+ CM(M) 922/2016

DR RAJENDRA CHADHA Petitioner
Through Ms.Urvashi Singh, Mr.Naveen
K.Nayyar and Mr.Harangad Singh, Advocates.

versus

MANMOHAN BHASIN & ORS Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
20.09.2016

CM No. 34143-44/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 922/2016 and CM No.34142/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 16.05.2016 of the appellate court dismissing the appeal of the petitioner.
2. The petitioner has filed the suit seeking a declaration against the respondents/intended buyers declaring the petitioner as a tenant in the suit property. Alongwith the suit an interim injunction application was filed which was dismissed by the trial court. Hence, the appeal was filed which also stands dismissed by the impugned order.
3. As per the plaint it is stated that the property was previously owned by Late Sh. Sardari Lal Bhasin. The property is a 800 sq. yds house in Patel

Nagar. The petitioner is the son of the daughter of Late Sh. Sardari Lal Bhasin. He claims that Late Sh. Sardari Lal Bhasin requested his daughter/mother of the petitioner to send him to look after Late Sh. Sardari Lal Bhasin in 1976 as no one was prepared to take care of him. Based on this averment, it is stated that Late Sh. Sardari Lal Bhasin executed a Will partly in favour of the mother of the petitioner. A Probate Petition was pending. Being the LR of his mother title is claimed to a part of the property. It is now contended by the petitioner that he is sailing in two boats, namely, as a co-owner and also as a tenant as Late Sh. Sardari Lal Bhasin had inducted him into a portion of the suit property as a tenant and had executed rent receipts in his favour.

4. A perusal of the impugned order shows that the trial court noted that in the Probate Petition regarding the Will being FAO (OS) 129/1997, the parties entered into a settlement that the suit property would be sold. The petitioner has consented and has agreed to receive 12.5% of the sale proceeds received from the auction of the suit property pursuant to the order of the court. The trial court also noted that the petitioner has deliberately not stated the material facts relating to his consent to the auction of the suit property and that in the plaint, the petitioner has merely mentioned that the probate proceedings are pending without divulging the consent order. It also noted that a perusal of the plaint shows that no real apprehension of dispossession has been cited by the petitioner as he merely states that he heard from few persons that he will have to vacate the suit property. Accordingly, the appeal was dismissed upholding the order of the trial court declining stay of the petitioner.

5. Learned counsel for the petitioner has strenuously argued that there is

no suppression of material facts and the factum of auction has already been stated in the plaint. It is further urged that in any case, the compromise was in the capacity of a co-owner and that it does not in any manner affect the rights of the petitioner as a tenant. Reliance is also placed on an order of a Single Judge of this court where injunction order has been granted to the other two tenants of the property.

6. I may first look at the plaint filed by the petitioner. The only reference to the compromise is stated in para 4 is as follows:-

“4. That the matter regarding probate of Will is pending before the Hon’ble High Court vide FAO No. 129/97, titled Smt.Anjana Bhasin & Ors. vs. Sh.S.P. Bhasin & Ors. the same is fixed for 16.12.2013 for further proceedings as the above stated property is put for auction as per the order of Hon’ble Hihg Court. The auction to be held on 08.01.2014 on an “AS IS WHERE BASIS”.”

7. There is no reference to the fact that on 21.05.2014 in FAO(OS) 129/1997 titled as Smt.Anjana Bhasin & Ors. vs. Sh.S.P. Bhasin & Ors., the parties including the petitioner had entered into a compromise whereby it was agreed that the said suit property would be sold by a public auction and that the petitioner would receive 12.5% of the auction proceeds. In the said order, there is no reference whatsoever to the fact that the petitioner is sailing in two boats, namely, as a co-owner and as a tenant.

8. It is the contention of the petitioner that in an application filed before this court this aspect has been clarified.

9. Be that as it may, none of these averments are stated in the plaint. The appellate court has rightly noted that there is suppression of material facts by the petitioner.

10. Coming to the other argument that there is a threat of dispossession. The apprehension of dispossession is merely based on some conversation which the petitioner claims to have heard.

11. In my opinion, there is no material illegality or irregularity in the impugned order. The present petition is without merit and is dismissed.

JAYANT NATH, J

SEPTEMBER 20, 2016

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