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

+ **FAO(OS) 33/2015**

SURESH KAPOOR (REPRESENTED BY: LRS)Appellant

Represented by: Mr.Virender Goswami, Advocate
with Ms.Soni Singh, Advocate

versus

SHASHI KHANNA & ORSRespondents

Represented by: Mr.Sangram Patnaik, Advocate with
Ms.Tehsina and Mr.Chandan Misra,
Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **28.03.2016**

1. Having heard learned counsel for the parties and having perused the record of the suit we find no infirmity in the impugned order dated October 10, 2014, for the reason a perusal of the plaint would reveal that it is a case of ouster and the learned Single Judge has correctly opined that the appellant must pay ad-valorem court fee.

2. Suit property was admittedly owned by Late Bhoop Devi Malhotra and her daughter Bimla. The title document is in their names. In the plaint the appellant has wrongly pleaded that Late Bhoop Devi Malhotra was the full owner of the suit property. Faced with the written statement and documents filed, the appellant has sought to amend the plaint and lay a challenge to the title of Bimla.

3. A perusal of the plaint would show that the case of the appellant is that Late Bhoop Devi Malhotra was the owner of the property and on her

death on June 05, 1969 her son Beli Ram Malhotra became the owner. On his death on May 14, 1973 his wife Gullo Devi, daughters Kamla and Bimla and son Harbans Lal inherited the suit property. It is pleaded that Bimla used to look after the property, manage it and let it out. It is pleaded that even during the lifetime of Gullo Devi Bimla never rendered any account to Gullo Devi.

4. Overlooking for the moment that as per Bimla Devi she was the owner of half share in the property and Gullo Devi bequeathed her share in the property which devolved on her under a will executed by Beli Ram Malhotra, in her favour, suffice would it be to highlight that in the plaint there is a clear admission of ouster by Bimla Devi evinced by the averments in the plaint that Bimla Devi was in possession of the entire suit property and would let it out; only to appropriate the entire rent.

5. Decisions wherein suit property was let out by the common ancestor resulting in the Courts holding that in said circumstance suit filed by a sibling against another sibling would require constructive possession (through the tenant) of the plaintiff sibling are clearly distinguishable.

6. The appeal is dismissed but without any order as to costs.

CM No.1121/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MARCH 28, 2016

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