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

+ CM(M) 900/2015 & C.M. No.21284/2015

AKBARI

..... Petitioner

Through Mr.S.S.Panwar, Advocate.
versus

D D A

..... Respondent

Through Mr.Dhanesh Relan, Advocate for DDA.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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09.02.2016

The impugned order suffers from no infirmity. The ratio of the judgment of Anathula Sudhakar Vs. P.Buchi Reddy (dead) by L.Rs. & Ors. reported as AIR 2008 SC 2033 is fully applicable.

Record shows that the present suit which has been filed is a suit for injunction. Suit property is an area measuring 35 sq. yards bearing property no. 220-B, Savitgri Nagar, Sheikh Sarai, New Delhi. Contention of the plaintiff is that this property falls in Khasra No.548/135.

The preliminary objection taken in the written statement reads as under:

“That the suit property measuring 35 sq. yards bearing property number 220-B, Savitri Nagar, Sheikh Sarai, Phase-I false in Khasra No.79, Village Sheikh Sarai and was acquired vide two Awards bearing number 1306 and 1405.”

This objection taken in the written statement clearly show that there is a dispute of title raised by the defendant and the ratio of the judgment is thus applicable as has been laid down in para 11.3 of the

said judgment and reads herein as under:

“Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.”

Learned counsel for the petitioner submits that this judgment would not be applicable and such a factual dispute can be decided by getting the demarcation done.

This Court is not in agreement with the submission of the learned counsel for the petitioner. In view of the ratio of the above judgment laid down by the Apex Court (supra), the impugned order directing the plaintiff to amend her suit calls for no interference. This petition is dismissed with cost of Rs.10,000/-.

INDERMEET KAUR, J

FEBRUARY 09, 2016

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