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

+ CM(M) 135/2015

OM PARKASH PARIHAR Petitioner
Through: Mr. Satish Kumar Verma, Advocate
Versus

CHARAT SINGH & ORS Respondents
Through: Mr. Pradeep Kumar Kasana,
Advocate for respondent no.1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.10.2017**

1. This petition under Article 227 of the Constitution of India impugns the order dated 10th November, 2014 in MCA No. 6/2014 U.I. No. 02402C0117492012 of the Court of Additional District Judge-02 (ADJ), Shahdara, Karkardooma Courts, Delhi of dismissal of the appeal preferred by the petitioner against the order dated 31st March, 2012 of the Civil Judge allowing the application of the respondent no.1/plaintiff under Order 39, Rules 1 and 2 of the CPC and thereby restraining the petitioner/defendant and the respondents/defendant nos. 2 to 4 from dispossessing the respondent no.1/plaintiff forcibly from the property.

2. The petition was entertained and notice thereof was ordered to be issued. The counsel for the respondent no.1/plaintiff appears. None appears for the respondent nos. 2 to 4, though, they have intermittently been appearing.

3. The counsels have been heard.
4. During the hearing, it has been informed that the property subject matter of the suit is a vacant plot of land.
5. The counsel for the petitioner / defendant states that in a demarcation carried out in pursuance to another proceeding, the said plot of land has been found to be in the khasra of the petitioner / defendant.
6. Needless to state, the counsel for the respondent no.1 / plaintiff controverts.
7. I have drawn the attention of the counsels to the principle, that possession of vacant land follows title and have enquired, whether there are any other proceedings between the parties for determination of title of the land. I may in this regard notice that the suit, from which this petition arises, is a suit for injunction simpliciter. As per **Anathula Sudhakar Vs. P. Buchi Reddy** (2008) 4 SCC 594, in such a suit, an enquiry into title cannot be done and the Court cannot render a finding as to the question of title.
8. The counsel for the respondent no.1 / plaintiff then states that the respondents / defendants no.2 to 4 earlier preferred CM(M) No.38/2015 against the same order as impugned in this petition. A copy of the order dated 23rd August, 2015 dismissing CM(M) No.38/2015 is handed over in the Court and is taken on record.
9. A perusal of the order aforesaid shows this Court to have dismissed that petition observing that though the respondent no.1 / plaintiff had *prima facie* proved his possession of the land, the petitioner / defendant had not.

10. The counsel for the petitioner / defendant states that the respondents / defendants no.2 to 4 are in collusion with the respondent no.1 / plaintiff.

11. Even if that be so, the petitioner / defendant must have also been a party to CM(M) No.38/2015. I am of the opinion that in these circumstances, this Court ought not to take a different view from that already taken in CM(M) No.38/2015.

12. However, the Court is always entitled to impose a condition on the party in whose favour interim relief is granted.

13. Considering the fact that title to the plot of land is in dispute and there is no finding yet with respect to title, it is deemed appropriate to make the interim order in favour of the respondent no.1 / plaintiff subject to the condition that the respondent no.1 / plaintiff also will maintain *status quo* qua title, construction and possession with respect to the plot of land.

14. It is ordered accordingly.

15. I may at this stage record that the counsel for the petitioner / defendant at the beginning of the hearing only had informed of the demise of the petitioner / defendant. However, on enquiry, it was informed that the legal heirs of the petitioner / defendant have already been substituted in the suit from which this petition arises.

16. On the oral request of the counsel for the petitioner/defendant, the following persons are substituted in place of the petitioner/defendant:

Sl. No.	Name of the Legal Heir	Relationship with the petitioner
1	Gajender Singh @ Gaje Singh	Son
2	Jitender Singh	Son
3	Satinder Singh	Son
4	Ms. Kavita	Daughter
5	Ms. Santosh	Daughter
6	Ms. Neelam	Daughter
7	Smt. Rekha	Daughter
8	Smt. Rakhi	Daughter
9	Smt. Dhramwati	Daughter

and the counsel who was earlier appearing for the petitioner / defendant appears for the said legal heirs of the petitioner / defendant also.

17. The petition is disposed of in terms of the above.

18. The learned Civil Judge before whom the suit is pending is also requested to consider the question whether in a suit for injunction simpliciter, a question of title can be decided.

19. A copy of this order be forwarded to the learned Civil Judge.

RAJIV SAHAI ENDLAW, J

OCTOBER 17, 2017

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