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

+ CM(M) 787/2012 & CM No.11824/2012 (for stay)

KHERATI LALL AND SONS

..... Petitioner

Through: Mr. Alok Bhachawat and Ms. Tavishi
Chandra, Advs.

Versus

SATISH KAPOOR

..... Respondent

Through: Mr. Varinder Kumar Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **27.07.2017**

1. This petition under Article 227 of the Constitution of India impugns the order (dated 22nd May, 2012 in Suit No.151/2010 of the Court of Civil Judge, Patiala House Court, New Delhi) of dismissal of (a) the application of the petitioner/defendant for an opportunity to lead evidence; (b) the application of the petitioner/defendant for amendment of the issues; (c) the application of the petitioner/defendant under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC); and, (d) the application of the petitioner/defendant under Order IX Rule 7 of the CPC.

2. The petition was entertained and vide *ex-parte* order dated 16th July, 2012 which continues to be in force, the Trial Court restrained from finally disposing of the case.

3. Before the Trial Court, the suit is at the stage of final arguments and thus owing to the interim order in this petition, in operation for the last over five years, the proceedings in the suit remained stayed.

4. During the course of hearing, I have perused the pleadings and it

transpires that the respondent/plaintiff had instituted the suit for permanent injunction to restrain the petitioner/defendant from selling, transferring, sub-letting, assigning or otherwise parting with possession of property No.80, Janpath, Connaught Place, New Delhi.

5. The defence of the petitioner/defendant to the suit *inter alia* is of having agreed to purchase 9% share in the property through the medium of Agreement to Sell, Power of Attorney, Will etc.

6. According to the respondent/plaintiff, the petitioner/defendant is only a tenant in the property.

7. The respondent/plaintiff has also filed a petition for eviction of the petitioner/defendant and which is pending consideration.

8. I have enquired from the counsel for the respondent/plaintiff that the suit being for injunction simplicitor, how can the questions of title which appear to be in issue, be adjudicated therein. Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy** (2008) 4 SCC 594 has held that the questions of title cannot be adjudicated in a suit for injunction simplicitor.

9. However, it is not even known as to what are the issues framed in the suit, inasmuch as neither of the counsels is in possession of the copy of the order framing the issues.

10. However the inkling from the application for amendment of issues is that issues of title having indeed been framed in the suit.

11. It is deemed appropriate to give an opportunity to the counsels to place the order framing the issues and to address arguments on the aforesaid aspect.

12. List on 1st August, 2017. No adjournment shall be granted.
13. At this stage, the counsel for the respondent/plaintiff states that the impugned order be set aside by allowing all the applications of the petitioner/defendant subject to terms.
14. Though ordinarily this Court, without satisfying itself about the need for interference in the order of the Trial Court, would not set aside the order of the Trial Court but since the aforesaid questions as to the very maintainability of the suit arise, it is deemed appropriate to accede to the request and the Trial Court is also requested to look into the aspect which has been highlighted in this order.
15. Accordingly, subject to the petitioner/defendant paying costs of Rs.25,000/- to the counsel for the respondent/plaintiff within fifteen days of today, the petition is allowed and the impugned order is set aside. Resultantly, the applications which have been dismissed by the impugned order are allowed.
16. List before the Trial Court on 19th August, 2017, as already scheduled.
17. The Trial Court is requested, while proceeding further with the suit, also consider the aforesaid questions raised as to the maintainability of the suit and the purpose if any which the suit will serve.

The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

JULY 27, 2017

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