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

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Date of Decision: 10th July, 2017

+ CM(M) 929/2016 & CM No.34172/2016

ATUL KRISHNA TRIVEDI

..... Petitioner

Through: Mr. R.K. Jain and Mr. Himanshu
Setia, Advs. with petitioner in person.

versus

PUSHPA TRIVEDI & ORS

..... Respondent

Through: Ms. Rachna Aggarwal, Adv. for R1
and R3.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 28th July, 2016 whereby the Trial Court held the appellant's suit for injunction to be a suit for possession and directed the appellant to pay the *ad valorem* Court-fees.
2. The appellant claims to be the owner of the suit property bearing flat No.45, Pragati Apartments, West Enclave, Pitampura, Delhi-110034 and was residing in the suit property up to 24th April, 2013 when the defendants prevented the entry of the appellant in the house. The appellant claims to have again attempted to enter his house on 04th June, 2016 but was not allowed to enter. The appellant filed the suit for permanent and mandatory injunction for restraining the respondents for preventing him to enter the

house.

3. Learned counsel for the appellant urged at the time of hearing that the appellant can maintain a suit for permanent and mandatory injunction. Reliance is placed on *Padmavati Mahajan v. Yogender Mahajan*, 152 (2008) DLT 363.

4. Learned counsel for the respondents submits that the appellant is liable to pay *ad valorem* Court fees by treating the prayer for permanent injunction as a prayer for possession. Learned counsel for the respondents further submits that the respondent No.1 is the legally wedded wife of the appellant and matrimonial disputes are pending between the parties before various Courts. It is submitted that respondent No.1 is not a licensee. It is submitted that the suit property is the matrimonial home of respondent No.1 and the respondents have right to stay in the suit property. It is further submitted that the appellant's suit is barred by limitation.

5. This Court is of the view that the appellant who claims to be the absolute owner of the suit property and was staying there till 24th April, 2013, can maintain a suit for permanent and mandatory injunction. The law on this issue is well settled by catena of judgments namely *Gowri v. Shanthi and Another*, (2014) 11 SCC 664, *Malik Mohd Tanveer v. Uzma Malik*, 2016 SCC OnLine Del 4515, *Mulk Raj Khullar v. Anil Kapur*, 2013 (139) DRJ 303, *Hasan Ali v. Akbari Begum*, 2006 (133) DLT 26, *Virender Kumar v. Jaswant Rai*, 2011 SCC OnLine Del 1258 and *Hori Lal v. Sarwan Kumar*, (1992) 46 DLT 173. The learned counsel for the appellant could not cite any judgment to the contrary.

6. The appeal is allowed and the impugned order is set aside. The valuation of the suit for the purposes of Court-fees is held to be proper and

the Trial Court shall proceed with the suit in accordance with the law. Pending application is disposed of.

7. It is clarified that this Court has not examined respondent's objection of limitation and the respective claims of the parties on the merits. The parties shall urge their respective contentions before the Trial Court.

8. Learned counsels for the parties submit that this matter be referred to Delhi High Court Mediation and Conciliation Centre to enable the parties to make an endeavor for settlement and the report of the outcome of the mediation be sent directly to the Trial Court.

9. List before Delhi High Court Mediation and Conciliation Centre on 20th July, 2017 at 04:30 P.M.

10. The Delhi High Court Mediation and Conciliation Centre shall appoint a Senior Mediator to mediate between the parties. The Delhi High Court Mediation and Conciliation Centre shall send the report of the mediation to the Trial Court.

11. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

JULY 10, 2017

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J.R. MIDHA, J.