

\$~20.

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

+ **FAO(OS) 296/2016 and CM APPL. 38364/2016**

SARDUL SETH Appellant

Through: Mr. Jasmeet Singh, Advocate with
Ms. Astha Sharma, Advocate

versus

LAKSHMI SETH & ORS. Respondents

Through: Mr. Pradeep Narula, Advocate for R-1
and R-2.

Ms. Prerna Mehta, Advocate for R-4 and R-5.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE P.S. TEJI

ORDER

% **16.08.2017**

1. The present appeal has been received on transfer from another Bench.
2. The appellant/plaintiff is aggrieved by an order dated 17.08.2016 passed by the learned Single Judge, declining to grant any interim relief in his favour in terms of the prayer made in an application filed under Order XXXIX Rules 1 and 2 CPC (I.A. 17796/2015).
3. Mr. Jasmeet Singh, learned counsel for the appellant/plaintiff states that the limited grievance raised in the present appeal is with regard to the rejection of the stay application filed by the appellant/plaintiff in a suit for possession, declaration and mandatory injunction instituted by him against the defendants, insofar as the immovable properties mentioned in para 6 of the plaint are concerned.

4. Briefly stated, the relevant facts of the case are that the appellant/plaintiff (son of the respondent No.3 and Lt. Arun Kumar Seth) has instituted a suit for declaration, permanent and mandatory injunction against the respondent No.1 (wife of late Shri Arun Kumar Seth), respondent No.2 (daughter of respondent No.1 and late Arun Kumar Seth), respondent No.3 (mother of the appellant), respondents No.4 and 5 (companies wherein Lt. Shri Arun Kumar Seth has shareholdings) and the respondents No.6 and 7 (Co-operative Housing Societies) stating *inter alia* that besides the respondent No.2, he too is the biological son of Shri Arun Kumar Seth, who had expired on 24.10.2014. What emerges from the pleadings in the suit is that the respondent No.3, who happens to be the real sister of the respondent No.1, was in a relationship with Shri Arun Kumar Seth and though no legal sanctity can be attached to the same, he had married her in the year 1977.

5. Upon the demise of Shri Arun Kumar Seth, the appellant/plaintiff applied for grant of Letters of Administration, on propounding a will dated 01.06.2014, allegedly executed by his father (Test Case No.69/2015). Prior to filing the said probate petition, the respondents No.1 and 2 had applied for a succession certificate in respect of the entire estate of late Shri Arun Kumar Seth (Petition No.13/2015). Both the said petitions are stated to be pending on the Original Side of this Court. Thereafter, the appellant/plaintiff instituted the present suit against the respondents. Accompanying the said suit, was an interim application for seeking stay (I.A. 17796/2015), which has been dismissed in terms of the impugned order dated 17.08.2016, wherein the learned Single Judge has observed that he is not satisfied that there exist any circumstances which would warrant grant of interim relief.

6. The immovable properties in question owned by the deceased have been detailed in para 6 of the plaint and are as below:-

- (i) C-5/7, 2nd Floor with terrace, Vasant Kunj, New Delhi-110070.
- (ii) Flat #1 on the ground floor of Vaibhav Corporate Housing Society, F Wing, Opposite IAAI Ware House, Sahar Pipe Line, Mumbai 99.
- (iii) Santivan Group Housing Society Flat # F 12 2/2, Sanpada, Navi Mumbai 400705.
- (iv) House # 2445, ChhipiwadaKalan, Delhi-110006.

7. It is contended by Mr. Jasmeet Singh, learned counsel for the appellant that he was occupying one room in the premises at Sr.No.(i) above, which submission is vehemently disputed by Mr. Narula, learned counsel for the respondents No.1 and 2, who asserts that the entire flat is under the occupation of his clients. There is no dispute about the fact that the property at Sr.No.(ii) above is presently under the occupation of Mr.Anurag Khosla, a nephew of late Shri Arun Kumar Seth and the property at Sr.No.(iii) is in the occupation of the respondent No.1. The property mentioned at Sr.No.(iv) above, is lying vacant and both the parties state that they have placed their respective locks at its entrance.

8. Mr. Narula, learned counsel for the respondents No.1 and 2 submits that if the appellant proposes to confine the relief in the present appeal to the immovable properties mentioned above, then his clients would not have any objection to maintaining *status quo* in respect of the said properties and in the event, the nephew of late Shri Arun Kumar Seth vacates the premises at Sr.No.(ii) above and hands over keys to the respondents No.1 or 2, they shall immediately inform the Court and not induct any party therein without

obtaining prior permission from the Court.

9. Ms. Prerna Mehta, learned counsel for the respondents No.4 and 5/companies submits that as the appellant has not referred to the movable properties of the deceased, Shri Arun Kumar Seth in the shape of his shareholdings in the respondents No.4 and 5, she does not have anything to say in opposition to the present appeal.

10. Accordingly, with the consent of the parties, the present appeal is disposed of by directing the appellant and respondents No.1 and 2 to maintain *status quo* as on date, in respect of the immovable properties mentioned at Sr.No.(i) to (iv) above with a condition that as and when the property at Sr.No.(ii) is vacated, intimation of the same shall be conveyed in the suit proceedings and no third party interest shall be created therein by the respondents No.1 and 2, without obtaining prior permission from the Court.

11. The appeal is disposed of alongwith the pending applications.

HIMA KOHLI, J

P.S. TEJI, J

AUGUST 16, 2017

rkb