

\$~3.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 188/2017
SANDEEP BHATIA Petitioner

Through: Mr. H.C. Sukhija, Advs.

versus

DELHI DAYALBAGH CO-OPERATIVE HOUSE
BUILDING SOCIETY LTD. Respondent

Through: Mr. P.S. Prakash, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

31.10.2017

1. This order is in continuation of the earlier order dated 29th August, 2017.
2. The respondent is reported to be served and the counsel for the respondent appears and seeks time to file a reply.
3. A Revision Petition, as the present proceeding is or a petition under Article 227 of the Constitution of India, is concerned with the correctness of the proceedings of the Court within the supervisory jurisdiction of this Court and is to be decided on the basis of the record of the said Courts and not on the basis of any fresh pleadings unless the circumstances otherwise require. The present case, as indicated in the earlier order dated 29th August, 2017, is concerned only with the correctness of the order of the learned Civil Judge refusing to substitute the petitioner in place of his father in the suit filed by the father of the petitioner against the respondent / defendant.
4. The learned Civil Judge has refused substitution observing that the suit filed by the father of the petitioner was for the relief of mandatory injunction and which relief was in personum and cause of action wherefor

did not survive to the petitioner as an heir of his father.

5. The father of the petitioner instituted the suit, from which this petition arises, pleading (i) that he was the registered owner of plot no.C-18, Soami Nagar, New Delhi – 110 017, a colony developed by the respondent / defendant Co-operative House Building Society; (ii) that he was in continuous peaceful physical possession of land forming part of the colony and adjacent to the plot no.C-18 aforesaid; and, (iii) that the respondent / defendant Society had transferred similar lands adjoining to other plots in favour of the owners of the said other plots in the colony but had refused to allot the plot adjoining to his plot to him, and had sought the relief, in the suit, of mandatory injunction directing the respondent / defendant Society to transfer the said adjoining land in his favour.

5. The counsel for the respondent / defendant Society has sought to support the impugned order on the same reasoning as given by the learned Civil Judge.

6. I have enquired from the counsel for the respondent / defendant Society whether not plot no.C-18, of which the father of the petitioner was the owner by virtue of membership of the respondent / defendant Society, after the demise of the father of the petitioner, would vest in his legal heirs.

7. The counsel for the respondent / defendant Society states that it can so vest in the legal heirs only if they become the members of the respondent / defendant Society.

8. All the aforesaid aspects are to be decided in the suit. Today we are concerned with the question, whether the relief of mandatory injunction claimed in the aforesaid facts can be said to be a relief in personum, which

would not survive to the legal heirs of the petitioner.

9. In my view, the answer has to be no. The relief which was claimed in the plaint was attached to the land which was admittedly in the ownership of the father of the petitioner though by virtue of his membership of the respondent / defendant Society. The petitioner or any other legal heir of his father, if has become entitled to the said plot of land, would also have a right to pursue the suit for allotment of the adjoining land. A relief of mandatory injunction in the said facts cannot be said to be in personum and cause of action wherefor does not survive.

10. The petition is therefore allowed.

11. The impugned order dated 11th May, 2017 is set aside.

12. The application of the petitioner for substitution in place of his father, in the suit from which this petition arises, is allowed.

13. The petitioner to however, in accordance with the statement recorded in the order dated 29th August, 2017, also implead the other natural heirs of his father as defendants to the suit and to all of whom notice of the suit shall be issued.

14. Needless to state that all defences available to the respondent / defendant Society on the maintainability of the suit shall remain open to the respondent / defendant Society.

15. The petition is disposed of.

16. The parties to appear before the Civil Judge-08 (Central), Tis Hazari

Courts, Delhi and if the Court has been abolished, before the Court to which the suit may be assigned, on 5th December, 2017.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 31, 2017

‘pp’..

C.R.P. 188/2017

page 4 of 4