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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 420/2011 and CM APPL.7118/2011 (stay)

JANKI SHARMA Petitioner
Through: Mr. R.S. Sahni, Advocate

versus

RAJENDER SOLANKI & ANR Respondents
Through: Mr. Badal Pareek, Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

% **ORDER**
08.03.2018

On the application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (CPC) moved on 14.09.2009 by the petitioner, she being the plaintiff of the case, the administrative civil judge by his order dated 15.01.2010 had directed the first respondent not to dispossess her from the subject property, bearing No.WZ-725A, Palam Vihar, Delhi till disposal of the main suit. The first respondent (the defendant) assailed the said order before the senior civil judge in miscellaneous appeal (MCA No.4/2010) which was allowed by order dated 06.12.2010, consequently vacating the said *ad interim* injunction and dismissing the application of the plaintiff under Order 39 Rules 1 & 2 CPC.

The petition at hand challenges the above said order of the first appellate court and this court recorded, thus, on 07.04.2011:-

“Learned counsel for the petitioner urges that the Court of first instance rightly allowed the injunction application which has been wrongly dismissed by the impugned order allowing the appeal of the respondents/defendant. It is argued that the affidavit which is relied upon for claiming transfer of title shows the consideration is stated to be paid only in cash. It is further argued that the very fact that original title documents of property continued to be with the petitioner is a clear cut indication of the fact that half share in the property which the respondents claim was never transferred by the petitioner. It is further argued that if really the respondents, and their predecessors in interest were in possession right from 1990 till 2005, they would have had unimpeachable documents to show possession over this long period of time, however, no such documents have been filed.

Till further orders, unless varied by the Court, there shall be stay of operation of the impugned order dated 6.12.2010.

Notice be issued to the respondents, on filing of process fee, both in the ordinary method as well as by registered post AD, returnable on 4th August, 2011. Dasti.”

As a natural consequence, the effect of the above said order was to revive the interim injunction that had been granted by the trial court, which has remained operative till date.

At the hearing, the learned counsel for the petitioner/plaintiff informed that the case is now at the stage of evidence of the defendant (DE). Having regard to the facts and circumstances of the case, and the prime consideration that the defendant even otherwise would not be entitled in law to dispossess the party in possession without following the due course, there is no reason why the above said interim injunction should not operate during the pendency of the suit.

Ordered accordingly.

The petition and the application filed therewith stand disposed of in above terms.

MARCH 08, 2018
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R.K.GAUBA, J.

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