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

Decided on: 26th April, 2018

+ CM (M) 25/2015

HANS RAJ (DECEASED) THROUGH LRS. Petitioner

Through: Mr. R.K. Sharma, Ms. Dezy
Gaur & Mr. Ravinder Adlakha,
Advs.

versus

MUNICIPAL CORPORATION OF DELHI & ORS

...Respondents

Through: Mr. Ashutosh Lohia, Ms.
Soumya Kumar & Mr. Armaan
Grover, Advs. for R-4 (f).

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners are the plaintiffs of the civil suit (suit no. 171/2002) which was instituted in 1999 against first to fourth respondents for the reliefs of injunction – mandatory and prohibitory, the cause of action claimed being that the said parties (defendants) had carried out certain unauthorized construction in property no. 5404, New Market, Ghorewali Sarai, Sadar Bazar, Delhi in which the plaintiffs of the case claim to have an interest. The mandatory injunction sought was directed against the Municipal Corporation of

Delhi (MCD) which is impleaded as first respondent in these proceedings, the prayer being for removal of the unauthorized construction. It appears that on the basis of pleadings that came to be filed and MCD having admitted the construction of 32 illegal shops, the trial Judge, by order dated 05.03.2003, granted part decree by issuing mandantory injunction, as prayed. The said order was challenged by one Dalip Singh, who was not a party to the suit, by appeal (RCA 93/2009). The said appeal was dismissed by first appellate court by judgment dated 26.11.2009. Pointedly, the said Dalip Singh is stated to have died during the hearing on the said first appeal and was substituted by his legal representatives they including Manmohan Singh (respondent No. 4 - f) in the present petition.

2. After the dismissal of the appeal against the part decree, the said Manmohan Singh filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908, *inter alia*, claiming that he had been a tenant for more than 50 years in the property in respect of which the suit had been filed, reliance being placed on various documents specifically rent receipts issued to him pertaining to one of the portions of the suit property. The said application was allowed by the Civil Judge by order dated 04.09.2013 which is impugned by the present petition.

3. The second respondent has died. His legal representatives are substituted in his place on application (CM No. 19665/2017), the delay in moving the same being condoned thereby also allowing separate application (CM No. 19666/2017) moved for such relief. The main petition had been dismissed in default. In view of explanation

offered by application (CM No. 2704/2016), the same is restored and taken up for final hearing and disposal.

4. Having heard the learned counsel on both sides and having gone through the record, this Court finds no good reason why Manmohan Singh should be allowed to join the fray as a defendant, in the aforementioned facts and circumstances. The plaintiff of the case does not claim any relief against him or his predecessor-in-interest, he being not a party to the suit. Any decree passed in such suit will obviously not bind him. If under the cover of any such directions that are issued in the suit of the plaintiff as may affect adversely the right of the said applicant, he would have the liberty to pursue remedies available to him in law. Even otherwise, if a cloud is brought on his interest in the property of which he claims to be the tenant and in possession, he has the liberty to institute his own independent proceedings. He cannot impose himself on the plaintiff so as to complicate or compound the issues raised by the parties thereto.

5. The petition is, thus, allowed. The impugned order is set aside. The application under Order I Rule 10 CPC of the respondent no. 4 –f is dismissed though reserving his right to pursue his rights, if any, in his own independent proceedings.

R.K.GAUBA, J.

April 26, 2018

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