

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

% *Date of Judgment: 30.10.2018*

+ **CM (M) No.1325/2018**

KAMLA Petitioner

Through: Mr. Sunil Chauhan & Mr. Nitin
Kumar, Advocates.

versus

CHARAN SINGH SHARMA & ORS ...Respondents

Through: Mr. Tushar Sannu, Advocate for
North MCD/R-9.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

C.M. No.45492/2018 (for exemption)

Allowed, subject to all just exceptions.

The application is disposed of.

CM (M) No.1325/2018 & C.M. No.45491/2018 (for stay)

1. In this petition filed under Article 227 of the Constitution of India, the petitioner has assailed the order dated 16.7.2018 by which the court of learned Additional District Judge-03, North District, Rohini dismissed the application of the petitioner to treat issue Nos.3, 4, 5 and 7 as preliminary issues. Learned ADJ has observed that these issues are mixed question of facts and law and cannot be treated as preliminary issues. Learned counsel for the petitioner submits that at least issue No.3 *'Whether the suit of the plaintiff is barred by proviso Section 34 of the Specific Relief Act? OPD (D-8)* and issue No.5

'Whether the suit of the plaintiff is barred by Order II Rule 2 of CPC? OPD (D-8)' should be treated as preliminary issues.

2. It is submitted by the learned counsel for the petitioner that the plaintiff has merely claimed a relief of declaration which is not maintainable under Section 34 of the Specific Relief Act. He has relied upon the judgment of the Hon'ble Supreme Court in *Union of India vs. Ibrahim Uddin & Anr.*; (2012) 8 SCC 148 to urge that a suit for declaration in the absence of consequential relief of possession is not maintainable.

3. A perusal of the copy of the plaint filed by respondent No.1 reflects that the plaintiff/R-1 has not only claimed a decree of declaration to the effect that he is the owner in possession of the plot bearing municipal No.634 measuring 200 sq. yds. situated in Rishi Nagar Shakur Basti, New Delhi being the successor in interest of Late Smt.Shiv Devi who became owner by virtue of the sale deed dated 19.5.1953 but also a decree of permanent injunction to restrain the petitioner and other defendants from transferring and raising any construction and changing the nature of the suit property. On issue No.5, I have perused copy of the plaint in Suit No.328/1992. This suit was not filed by the respondent/plaintiff but by petitioner and respondent No.2 to 4 and Smt. Rewti Devi and it is incomprehensible to apply Order II Rule 2 CPC.

4. I do not find any illegality or infirmity in the impugned order. The petition along with C.M. No.45491/2018 is accordingly dismissed with no order as to costs.

(VINOD GOEL)
JUDGE

OCTOBER 30, 2018
‘AA’

