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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.236/2016, IA No.5993/2016 (under Order XXXIX Rules 1&2 CPC) and IA No.1533/2017 (under Order I Rule 10 CPC).
SUBODH SINGH Plaintiff

Through: Mr. Mahesh Prasad and Ms. Ritika Achint, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ANR Defendants

Through: Ms. Dolly Sharma for Mr. M.K. Singh, Adv. for DDA.

Mr. Ranjan Sabharwal, Adv. for D-2.

Mr. R.S. Rana, Adv. for applicants.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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06.02.2017

IA No.1534/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CS(OS) No.236/2016, IA No.5993/2016 (under Order XXXIX Rules 1&2 CPC) and IA No.1533/2017 (under Order I Rule 10 CPC).

3. This suit is ripe for framing of issues.
4. Ms. Dolly Sharma, Advocate states that Mr. M.K. Singh, Advocate for defendant Delhi Development Authority (DDA) is not well and seeks adjournment.
5. IA No.1533/2017 has been filed by the nine legal heirs of Mr. Jai Bhagwan Jain, son of Mr. Inder Sain Jain, for impleadment in the suit.
6. The plaintiff by this suit *inter alia* seeks declaration of his title to plot no.2/14, Roop Nagar, Delhi *ad measuring* 300 sq. yds. and to restrain the two defendants namely DDA and North Delhi Municipal Corporation

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(NrDMC) from causing interference to the possession of the plaintiff of the said land.

7. It is *inter alia* the case of the plaintiff that the aforesaid land belonged to the ancestors of the plaintiff and though was excluded from acquisition notification but is being treated by the defendants DDA and NrDMC as part of acquisition and on which basis they are disturbing the plaintiff's possession of the said land.

8. The counsel for NrDMC states that a perpetual lease of the said land was granted by DDA/President of India as far back as in 1969 to Municipal Corporation of Delhi (MCD), being the predecessor-in-interest of defendant NrDMC, and NrDMC is in possession of the land.

9. The counsel for the applicants seeking impleadment invites attention to the judgment dated 5th May, 1986 of the Court of Shri R.K. Yadav, Sub Judge, Delhi in Suit No.479/1979 filed by one Mr. Inder Sain against DDA and MCD (at page 72 of the impleadment application) whereby a decree for permanent injunction was passed in favour of Mr. Inder Sain and against DDA and MCD restraining DDA and MCD from without due process of law dispossessing Mr. Inder Sain from 140 sq. yds. out of plot no.2/14. He further invites attention to the judgment dated 23rd September, 1985 of Shri R.K.Gauba, Sub Judge Delhi in Suit No.269/1975 filed by one Mr. Ram Kumar against MCD (at page 107 of the impleadment application) restraining MCD from dispossessing the said Mr. Ram Kumar from plot no.2/14, Roop Nagar, Delhi save by due process of law. Though from the said judgment the size of the plot is not immediately evident but the counsel for the applicants states that from the site plan filed in the said suit, it is



clear that the said judgment is with respect to 160 sq. yds. area.

10. The counsel for the applicants states that while the applicants are the heirs of Mr. Inder Sain Jain and are in possession of 140 sq. yds. of land, the plaintiff herein claims through Mr. Ram Kumar and though is entitled to only 160 sq. yds. of land but is claiming rights to the entire 300 sq. yds of land and hence need for the applicants to seek impleadment.

11. The counsel for the plaintiffs on enquiry states that Mr. Ram Kumar was the caretaker of the predecessor-in-interest of the plaintiff and the predecessor-in-interest of the plaintiff was the owner of the entire 300 sq. yds. of land.

12. The counsel for the applicants states that the applicants have instituted a suit for declaration of title with respect to their 140 sq. yds. of land imploding MCD and DDA as defendants thereto and which suit, though was earlier pending in this Court but on change of pecuniary jurisdiction, stands transferred to the District Court.

13. In view of the aforesaid, it has been enquired from the counsel for NrDMC as to how NrDMC inspite of having been injuncted by decrees aforesaid from disturbing the possession of Mr. Inder Sain and Mr. Ram Kumar, can claim to be in possession and whether has filed any suit for recovery of possession.

14. The counsel for the NrDMC though states that he has no instructions but states that in this suit as well as in the suit which has been transferred to the District Court, confirmation of possession of the plaintiff is sought and it is the case of NrDMC that it is in possession.

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15. On enquiry it is informed that the land continues to be an open piece of land and there is no construction thereon.

16. In my view, the only thing to be adjudicated in this suit is, whether there is an award of acquisition of the subject land or not. If there is an award, then the plaintiff as well as the applicants can have no claim. However if there is no award, then NrDMC can have no claim under the perpetual Lease Deed in its favour and the dispute would be *inter se* the plaintiff and the applicants and which is not to be the subject matter of the present suit.

17. On enquiry, the counsel for NrDMC states that the acquisition award would be in possession of the DDA.

18. On further enquiry, it is informed that DDA has not filed any document.

19. The Chief Legal Adviser of DDA is directed to personally look into the matter and by the next date of hearing, either handover to the counsel for DDA the documents showing acquisition of the subject land and if not, to personally remain present in person.

20. Similarly, the Chief Law Officer of NrDMC is directed to look into the matter having regard to all the documents and to either make the stand clear before this Court as to how, inspite of the two decrees already suffered, MCD/ NrDMC has not sued for possession and on what basis it is claimed that NrDMC, after the date of the said decrees, had come into possession.

21. Though in view of the aforesaid it appears that impleadment application has to be allowed but the counsel for the plaintiff states that he has not received even copy thereof.



22. The counsel for the applicants to today itself furnish copy of the impleadment application to the counsel for the plaintiff.
23. List on 9th March, 2017.

RAJIV SAHAI ENDLAW, J

FEBRUARY 06, 2017

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