

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.M.(M) No.799/2014 & C.M.Nos.14172/2014(stay)14173/2014(Exemption)**

% **29th August, 2014**

SMT. SHACHI MAHAJANPetitioner
Through: Mr.A.P.N.Giri, Advocate.

VERSUS

SMT. SANTOSH MAHAJAN Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India impugns the order of the trial court dated 23.7.2014 by which the trial court dismissed the application filed by the petitioner/defendant under Section 10 read with Section 12 and Order II Rule 2 of the Code of Civil Procedure (CPC). In the subject application, the petitioner/defendant claimed that the present suit is filed on the same cause of action which arose in the earlier filed suit.

2. The first suit which was filed by the respondent/mother-in-law was a suit for permanent injunction, that the petitioner/defendant who was also the defendant in the earlier suit, should not dispossess the respondent/mother-in-

law, the owner, from the portion in the suit property i.e D-113, Anand Vihar, Delhi which is in occupation of the respondent/mother-in-law. That portion in the earlier suit was a portion of the suit property which was in possession of the respondent/plaintiff. Injunction was claimed therefore by the mother-in-law against the daughter-in-law that the mother-in-law who was the owner should not be dispossessed of that portion of the property which was in her occupation and that too as owner of the suit property.

3. The second suit i.e the present/subject suit is a suit filed by the respondent/plaintiff against the petitioner/defendant with respect to one room on the first floor of the suit property. This one room on the first floor of the property was not the subject matter of the earlier suit for permanent injunction. Therefore, the present suit for possession, mesne profits etc is with respect to only one room on the first floor of the property, and to seek possession and mesne profits thereof is therefore a separate cause of action than the cause of action of the earlier suit for injunction.

4. The trial court has dealt with this aspect in the relevant para 5 of the impugned order, and which reads as under:-

“ 5. I have heard learned counsel for the parties and gone through the record of the case. Ld. counsel for the defendant has cited the case laws:- **(1) AIR 2013 SC 1712 (2) (2013) 1**

SCC, 625 and (3) (2014) 3 SCC 595. It is clear from the record that plaintiff had filed earlier suit for permanent injunction against the defendant on the basis of the cause of action accrued on different dates starting from 16.10.2012 to 19.10.2012 for the relief against forceful dispossession and the present suit has been filed by the plaintiff seeking recovery of the portion which is in occupation of the defendant alongwith the relief of permanent injunction. The cause of action as well as the reliefs claimed in both the suits are different and the subsequent suit has not been filed on the basis of the cause of action accrued for the earlier suit. It is clear that the earlier suit was filed on 20.12.2012 and the present suit has been filed after plaintiff served the defendant with a legal notice dated 22.12.2012 for vacating the suit property and handing over its possession to the plaintiff. Thus, it is clear from the pleadings of the present suit that cause of action for filing the present suit only accrued after plaintiff served the defendant with aforesaid notice and also when defendant failed to vacate the suit property. The cause of action for filing the present suit for possession was not available to the plaintiff at the time of filing of the earlier suit. Thus, the present suit is not hit by the provisions of section 12 and Order 2 Rule 2 CPC and thus, the same is maintainable. The Hon'ble Supreme Court has held in the case laws cited by learned counsel for the defendant that the subsequent suit is liable to be dismissed if cause of action for filing the subsequent suit was available with the plaintiff at the time of instituting the first suit. It is clear from the aforesaid discussions that the cause of action for filing the present suit was not available with the plaintiff at the time of instituting the earlier suit. Thus, it is respectfully observed that the present suit is not barred by the provisions of Order 2 Rule 2 & Section 12 CPC. The provisions of section 10 CPC

are also not applicable to the present case as subject matter of both the suits are different, as such, the proceedings of the present suit are also not liable to be stayed.”

5. I do not find any error in the impugned order because cause of action in the earlier suit was for permanent injunction to restrain the present petitioner from dispossessing the respondent/plaintiff from the portion of the property i.e D-113, Anand Vihar, Delhi which was the subject matter of the earlier suit and which was different than the subject suit in which the dispute is only with respect to one room on the first floor of the property which is in possession of the petitioner/defendant and whose possession etc is sought by the respondent/plaintiff in the present suit.

6. In view of the above, it cannot be said that the cause of action of the earlier suit and the present suit is the same.

7. Dismissed. Parties are left to bear their own costs.

VALMIKI J. MEHTA, J

**AUGUST 29, 2014
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