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

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**C.M. (Main) No.902 of 2009 & C.M. Appl. No.12191 of 2009**

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**01.02.2010**

MS. SONA RANI & ORS.

.....Petitioner

Through: Mr. Sanjeev Sindhvani & Ms. Ekta  
Kalraa Sikri, Advocates.

Versus

RAM RATTAN SINGH NAMDHARI

.....Respondent

Through: Mr. R.S. Sahni, Advocate.

Date of Reserve: 19<sup>th</sup> January, 2010

Date of Order: 1<sup>st</sup> February, 2010

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

**J U D G M E N T**

**1.** By this petition, the petitioner has assailed an order dated 24<sup>th</sup> July, 2009 passed by the Civil Judge dismissing an application of the petitioner (defendant before the trial court) under Order VI Rule 17 CPC.

**2.** The defendant made an application under Order VI Rule 17 CPC in a suit filed by the plaintiff for injunction (which was at the stage of final arguments and was pending for the last 35 years) on the ground that the defendant during pendency of the suit had come to know subsequently that the plaintiff was not the owner of the adjoining plot and the structure on the plot of the plaintiff was demolished by the local authorities on the ground that it was an encroachment on the public land. The petitioner/defendant wanted to amend the written statement to bring this fact on record.

**3.** The suit was filed by the plaintiff against the petitioner/defendant seeking a mandatory injunction against the defendant that defendant should remove doors, windows and ventilators opening towards the plaintiff's property along wall A-A. The plaintiff also wanted mandatory injunction that the defendant should demolish the platform made on the pavement shown on the site plan as area X B C & D and should restore the area to original shape.

**4.** In the written statement, the defendant had taken the stand that on the southern side, i.e., the side on which alleged doors, windows, etc., were opening, there was a passage leading to the main road through a gate and it was not a plot of land of the plaintiff. The doors, windows and ventilators of the defendant were opening towards the passage as per plan sanctioned by municipal committee in the year 1954. Similarly, about *chabuttra*, it was stated that the construction existed since long and no unauthorized construction had been made on the public land by the defendant.

**5.** It is evident from the pleadings that the defendant had already taken a stand that there was a *gali* between the property of the plaintiff and defendant and all windows, doors and ventilators of the defendant opened in the *gali* and not in the land of the plaintiff. Whether the plaintiff's property was an encroachment on Government land or not, was never an issue raised by the defendant nor is an issue relevant for the purpose of deciding the *lis* between the parties.

**6.** It is also submitted by the petitioner that the trial court wrongly dismissed the application for amendment on the ground of delays. He submitted that the delay in making amendment application could not be a ground for dismissal.

**7.** The trial court has not only observed that the application was filed after 35 years of filing of suit, but has also come to conclusion that the amendments sought were not relevant for the purpose of deciding the case before the trial court.

**8.** I find that the trial court rightly came to the conclusion. There is no infirmity in the order of the trial court. The petition has no force and is hereby dismissed with cost of Rs.10,000/- to be deposited with Delhi High Court Legal Aid Services Committee. The cost, if not paid, shall be recovered by the trial court from the petitioner.

**SHIV NARAYAN DHINGRA J.**

**FEBRUARY 01, 2010**  
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