

A-42

% 24.10.2011

Present: Mr.Rishikesh, Advocate for the petitioner.

+CM No.19635/2011 in CM(M) No.1251/2011

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Exemption is allowed subject to just exceptions.

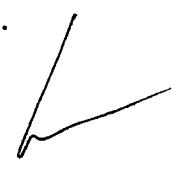
CM(M) No.1251/2011 & CM No.19633/2011 (for stay)

Impugned order is the order dated 16.7.2011 vide which the application filed by the defendant under Order VII Rule 11 of the Code of Civil Procedure (hereinafter referred to as "the Code") seeking a rejection of the plaint filed by the plaintiff, had been dismissed. Record shows that the present suit has been filed by the plaintiff Urmila Prasad against Rajesh Kumar Dubey; which is a suit for permanent injunction; contention of the plaintiff is that the plaintiff is residing at the aforementioned premises on the ground floor and running a kirana shop under the name and style of M/s Shubham Stores. Plaintiff and the defendant were using a common tube-well for water purpose; thereafter relations between the parties became strained; present suit had been filed by the plaintiff seeking injunction

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against the defendant from forcibly dispossessing her from the suit property. Contention of the defendant/petitioner in his application under Order VII Rule 11 of the Code is that this property had been purchased by the wife of Rajesh Kumar Dubey, namely Poonam Dubey and a suit for possession had been filed by Poonam Dubey in the year 2008; as such the present suit is not maintainable. The court in the impugned order had correctly noted that while dealing with an application under Order VII Rule 11 of the Code it is only the averments made in the plaint which are to be looked into and not the defence set up by the defendant. Even before this Court vehement arguments have been urged that the present suit is not maintainable although admittedly the suit filed by the wife of the petitioner Poonam Dubey was much later in time. There is no infirmity in the order of the trial court. This petition is an abuse of the process of the court. Dismissed.



INDERMEET KAUR, J

OCTOBER 24, 2011
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