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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 8/2016

BAL KRISHAN & ORS

..... Petitioners

Through Mr.Anil Kumar Verma and Mr.Ashu
Rani, Advocates.

versus

HARI SINGH

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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15.01.2016

C.M. No.1263/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

C.R.P. 8/2016

Order impugned before this Court is the order dated 17.10.2015. The application filed by the defendant/petitioner under Order VII Rule 11 CPC of the Code had been dismissed.

Record discloses that the present suit is a suit for declaration, permanent and mandatory injunctions. Plaintiff claims himself to be the owner of the suit property. Defendant nos.1 to 3 are the sons of the plaintiff and defendant no.4 is his wife. The prayer made in the petitioner is that a decree of permanent injunction be passed in favour of the plaintiff and against the defendants restraining them from interfering

in the peaceful possession of the plaintiff in the suit property i.e. 279, Dada Mai Wali Colony, Bankner, Narela.

In the course of these proceedings, the present application under Order VII Rule 11 CPC had been filed by the defendant seeking dismissal of the suit. Contention was that no cause of action had arisen in favour of the plaintiff. Report of the local commissioner (appointed by the said Court) disclosed that the plaintiff was not in possession of the suit property. Needless to state that this fact was disputed.

Trial Court had recorded a correct finding and noted that the report of the local commissioner is only a piece of evidence which has been collected in the course of the proceedings. The averments made in the plaint alone would decide whether the cause of action has arisen in favour of the plaintiff or not; while dealing with an application under Order VII Rule 11 CPC of the Code the defense set up by the defendant cannot be gone into.

The impugned order in this background calls for no interference. Petition is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 15, 2016
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