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

+ **CM(M) 44/2016**

NARENDER GUPTA & ORS

..... Petitioners

Through Mr. N.K. Jha, Adv.

versus

PUSHPA GUPTA & ORS

..... Respondents

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% 18.01.2016

C.M. No.1686/2016 (Exemption)

Exemption is allowed subject to all just exceptions.

Application disposed of.

CM(M) 44/2016 & C.M. No.1685/2016 (stay)

The petitioners are aggrieved by the impugned order dated 21.11.2015 vide which their application under Order 14 Rule 5 of the CPC seeking framing of an additional issue which reads herein as under:-

“Whether the plaintiffs are entitled for possession of the suit property i.e. agricultural land measuring 1000 sq. Yards (0-1 bigha) out of Khasra No.99/2 (200 sq. Yards) (0-4) and 91/23 (800 sq. Yards) (0-16) situated in the Revenue Estate of Village Alipur, Delhi? OPP ”

was dismissed. Attention has been drawn to the plaint which is a plaint seeking declaration, cancellation, possession, permanent injunction and mesne profits is the prayer made in the plaint including prayer No. 5 which specifically prays for a decree of possession qua this suit land has

been perused. Issues were framed on 10.08.2011; 10 issues were framed. There was no issue qua possession. This is the grievance of the petitioners. The Trial Court had dismissed the application summarily without seeking any reply from the defendant; the Trial Court was probably of the opinion that since the suit is at the final stage and is listed for final arguments, framing of additional issue will lead the matter to a rehearing.

Learned counsel for the petitioners points out that even if the additional issue is framed, there will be no requirement of leading any evidence as the evidence already led by the plaintiffs would cover the issue which is now sought to be framed.

Noting the above factual matrix and the averments made by the petitioners, this Court is of the view that the interest of justice demands that since a specific prayer in the plaint has been made praying for a decree of possession, the additional issue qua the possession be framed and accordingly the additional issue as noted supra is directed to be framed. It is also noted that since no additional evidence is required, the Trial Court shall proceed with the final arguments in the matter.

Petition disposed of.

Order dasti under the signature of the Court Master.

INDERMEET KAUR, J

JANUARY 18, 2016

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