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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 362/2016
MUNISH KUMAR

..... Petitioner

Through Mr.Amjad Hussian, Adv.

versus

SATISH CHAND GUPTA & ORS (DECEASED THR LS)

..... Respondents

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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25.04.2016

C.M. No.14385/2016 (exemption)

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

CM(M) 362/2016 & C.M. No.14384/2016 (stay)

Petitioner is aggrieved by the order dated 11.01.2016 vide which his application filed by him under Order VI Rule 17 of the CPC seeking an amendment of his plaint had been declined.

Record shows that the present suit is a suit for injunction which has been filed by the plaintiff against the defendant. On 30.7.2013 the Trial Court had passed an interim order in his favour wherein the Court had noted that prima facie physical possession of the suit property with the plaintiff had been established. In the course of the proceedings the plaintiff had filed the present application. His submission was that earlier the suit property which was an open piece

of land and as depicted by him in the site plan had been constructed in the year 2014 and by way of these amendments he want to bring to the notice of the Court that the suit property as depicted in the site plan is showing the constructed portion; that had been denied by the impugned order. The Trial Court has not noted the facts of the case in the correct perspective. The Trial Court has also noted that the nature of the suit would not be changed by way of this amendment but thereafter had gone on to dismiss the application.

This Court has been informed that issues are not yet framed. The matter is now fixed before the Trial Court for arguments on the application filed by the plaintiff under Order XXXIX Rule 1 and 2 of the CPC. Noting the nature of the amendment which are sought by the plaintiff which are only solving the controversy between the parties and not changing the nature of the suit and in no manner are prejudicial to the interest of the defendant, this Court is of the view that the Trial Court had committed an illegality in not allowing the amendment. The impugned order is set aside. Amended plaint is taken on record subject to payment of Rs.10,000/- as costs.

Petition disposed of.

Order dasti under signatures of Court Master.

INDERMEET KAUR, J

APRIL 25, 2016

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