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

+ **CM(M) 287/2016**

SUNDER SINGH Petitioner
Through Mr. Shekhar Gupta and Mr. Pulkit,
Advs.

versus

RAJA RAM Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
03.08.2016

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1. By the present petition the petitioner seeks to impugn the order dated 10.3.2016 passed by the trial court. The petitioner filed a suit for decree of possession, eviction and arrears of rent/mesne profits for suit property being Shop situated at Khasra No.699/1, House No.72, Ground Floor, Sonia Vihar Mandi, Saket Block, Mandawali Fazalpur, Near Mandawali Railway Station, Delhi-110092.

2. The defendant filed a written statement denying the relationship of landlord and tenant and claiming that the suit is filed on the basis of false and fabricated documents with the sole motive to drag the defendant into a

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false litigation and to grab the property of the defendant H.N./Jhuggi No.90, Harijan Camp, Near Mandawali Railway Station, Mandawali Fazalpur, Delhi-110092.

3. In view of the written statement, the petitioner moved an application under Order 26 Rule 9 CPC before the trial court for appointment of a Local Commissioner to personally visit the site and prepare a report as prayed in paragraph 5 of the application, namely, the details of persons in possession of the property and persons in possession of H.N./Jhuggi No.90, Harijan Camp, Near Mandawali Railway Station, Mandawali Fazalpur, Delhi-110092, etc.

4. A perusal of the impugned order shows that the trial court noted the controversy between the parties and relying upon various judgments concluded that the plaintiff is seeking to collect evidence for his case. It was also concluded that it is for the plaintiff to prove his case and it is not proper to appoint a Local Commissioner for this task. Keeping in view the above, the said application was dismissed.

5. In my opinion, the order has adopted an erroneous approach. The plaintiff has sought eviction and possession of a particular specified property. The defendant has claimed that the title documents of the plaintiff are forged and has given a different address which he is stated to have occupied. There is a confusion as to whether the two addresses relate to the same property or relate to different properties. Order 26 Rule 9 CPC provides for appointment of a Local Commissioner where the court deems a local investigation to be requisite. The jumble of facts necessitated appointment of a local commissioner.

6. The respondent has already been served through his wife. None has appeared for the respondent.

7. Accordingly, the present petition is allowed and the impugned order which had dismissed the application praying for appointment of a Local Commissioner is set aside.

8. Mr.Nikhil Mishra, Advocate (9839525315) who is present in court is appointed as a Local Commissioner to visit the premises. He will find out and ascertain the following:-

“A. Details of persons in possession of the suit property, i.e. Shop situated at Khasra No.699/1, House No.72, Ground Floor, Sonia Vihar Mandi, Saket Block, Mandawali Fazalpur, Near Mandawali Railway Station, Delhi-110092, tenure of possession and capacity of possession.

B. Details of persons in possession of the Jhuggi No.90, Harijan Camp, Near Mandawali Railway Station, Mandawali, Fazalpur, Delhi and tenure of possession and capacity of possession.

C. Whether the suit property and Jhuggi No,90, Harijan Camp, Near Mandawali, Railway Station, Mandawali, Fazalpur, Delhi are two separate properties being separately located.

D. Take photographs of the suit property along with photographs of persons in possession thereof along with photographs of Jhuggi No.90, Harijan Camp, Near Mandawali Railway Station, Mandawali, Fazalpur, Delhi along with persons in possession thereof.”

9. The fee of the Local Commissioner is fixed at Rs.20,000/- plus out of

pocket expenses. The Local Commissioner shall be entitled to take police protection. The concerned SHO is directed to ensure proper police protection while carrying out the inspection. Representatives of the petitioner and respondent shall be entitled to be present when the Local Commissioner carries out the inspection. The Local Commissioner may inform the petitioner/counsel for the petitioner of the date and time when the inspection is to be carried out.

10. Petition stands disposed of.

11. Copy of the order be given dasti under the signatures of the Court Master to the Local Commissioner.

JAYANT NATH, J

AUGUST 03, 2016

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