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

+ CM(M) 675/2016

RAM SINGH SONI	 Petitioner
Through	Petitioner in person
versus	
RAJ RANI & ANR	 Respondent
Through	Mr.Pankaj Vivek and Mr.Atul Tripathi, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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21.07.2016

Caveat No.568/2016

Since counsel for the caveator has entered appearance caveat stands discharged.

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1. By the present petition the petitioner seeks to impugn the order dated 8.7.2016. The trial court had by the said order dismissed an application filed by the petitioner under Order 7 Rule 11 CPC for rejection of the plaint on the ground that it is hit by Section 84 of the Delhi Land Reforms Act.
2. The impugned order concludes based on the pleadings and the submissions and judgments placed on record that it cannot be held that the petitioner is a rank trespasser and has to be alternatively treated as a lessee. Hence, the application under Order 7 Rule 11 CPC was dismissed as issues involved mixed questions of fact and law and the submissions of petitioner could only be adjudicated upon after completion of evidence by the parties.

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By the said order issues were also framed and an issue has been framed regarding maintainability of the suit in view of Section 185 of the Delhi Land Reforms Act.

3. The petitioner who is appearing in person submits that the land in question is agricultural land and that accordingly the present suit filed by the respondent would be barred under Section 185 of the Delhi Land Reforms Act, 1954. He further submits that the land is situated in village Ghitorni which is still a rural village. He relies upon an affidavit filed by the concerned department of Government of NCT of Delhi which is placed on record in the suit file stating that the village Ghitorni remains a rural land.

4. Learned counsel appearing for the respondent has relied upon the judgment of this Court in the case of ***Om Prakash vs. Maha Singh, 2014 SCC OnLine Del 2743*** to contend that Section 84 of the DLR Act is applicable only where the defendant is a rank trespasser. In the present case he submits that it is the own case of the petitioner that initially he had entered the premises as a tenant. Hence, he submits that section 84 of DLR Act would have no application and a suit would lie.

5. He further submits that the land has a construction and hence it is not an unconstructed agricultural land and even in such circumstances Section 84 of the DLR Act would not apply.

6. Reference may be had to the judgment in the case of ***Om Prakash vs. Maha Singh (supra)***. The relevant portion of the judgment reads as follows:-

“3....but in the present case since the defendants were tenants, Section 84 of the Delhi Land Reforms Act did not apply. I completely agree because a reading of the Section 84 shows that

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it only applied for a suit against a trespasser. In any case, as has been held by the first appellate court, the ejectment proceedings for land has to be for un-constructed land for Section 84 to apply, and since in the present case there is no un-constructed land but what is let out is a shop, the provisions of Delhi Land Reforms Act relied upon to contend that the civil court has no jurisdiction do not apply. The first appellate court rightly referred to the relevant provisions of the Delhi Land Reforms Act including Sections 3(11) (a) and Section 3(13) which defined a “holding” and “land” respectively, and it was therefore held by referring to these provisions that where the property is a constructed property i.e. a shop, the provisions relied upon for claiming that the suit was barred before the civil court did not apply inasmuch as the property in dispute was not land comprised in a holding but was a constructed property/shop.”

7. Further, the petitioner had submitted at the outset that initially he has been inducted as a tenant though subsequently as per the respondent he was treated as a trespasser. He has relied upon certain proceedings to show that the respondent has treated him as a trespasser. Hence, the above judgment in the case of ***Om Prakash vs. Maha Singh (supra)*** would be applicable to this case. The petitioner admits being a tenant for some period and not a trespasser. The disputed issue of a construction is also there.

8. It is clear from the judgment of a co-ordinate bench of this Court that the issues involved would require evidence. It is appropriate that the plea taken by the petitioner is adjudicated upon after the evidence is completed. There is no infirmity in the impugned order.

9. At this stage, it is pointed out by the petitioner that the impugned order appoints a Local Commissioner to record evidence and also lays down detailed procedure to be followed by the Local Commissioner. He submits

that one of the procedure stated is that the judicial file shall not be sent or summoned for recording of evidence by the Local Commissioner. He submits that this direction would create obstacle in the course of leading evidence/cross-examination of witnesses.

10. Learned counsel appearing for the respondent submits that he has no objection if the judicial file is summoned by the Local Commissioner for the purpose of recording of evidence/cross-examination.

11. Hence, in view of the consent of the parties, the direction in the impugned order regarding the procedure to be adopted by the Local Commissioner for recording of evidence is partly modified. The Local Commissioner may summon the file if required by any of the parties for the purpose of recording of evidence/cross-examination. The file would be brought to the Local Commissioner by the concerned official from the court. The party requesting for the file would have to pay the costs involved for such summoning. The concerned official who takes the file would be entitled to a payment of Rs.750/- on account of reimbursement of expenses.

12. Petition stands disposed of.

JAYANT NATH, J

JULY 21, 2016

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