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

+ **CM(M) 1025/2016**

VIJAY KUMAR MISHRA Petitioner
Through **Mr.Avinash Detha, Advocate**

versus

VIDYAWATI AND ANR Respondents
Through **None.**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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05.10.2016

CM No. 37364-65 /2016 (*exemptions*)

Allowed subject to all just exceptions.

CM(M) No.1025/2016 & CM No.37363/2016(*stay*)

1. By the present petition, the petitioner seeks to impugn the order dated 17.09.2016 by which his application under Order 7 Rule 11 CPC was dismissed.
2. The respondents have filed a suit for recovery of possession, damages, mesne profits and permanent injunction regarding the suit property situated at E-1/25, Gali No.1, Pusta-5, Sonia Vihar, Delhi-110094. The respondent in the plaint claim to have brought the property from her own father vide documents like GPA, Agreement to Sell, affidavits, Will etc. It is averred in the plaint that she has been dispossessed by the petitioner on 29.01.2016. Hence, the present suit has been filed.
3. The petitioner thereafter filed the application under Order 7 Rule 11

CPC to reject the plaint. It was contended that perusal of the documents relied upon by the respondents in the plaint to claim title to the property on the face of it shows that the same confers no title on her. Reliance is placed on the judgment of the Supreme Court in the case of *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr. 2012(1) SCC 656* to contend that the documents are not registered, such documents have been depreciated in the said judgment and that the same confer no title. The trial court dismissed the application on the ground that the suit appears to have been filed under Section 6 of the Specific Relief Act and it cannot be said that the plaint does not disclose any cause of action.

4. The learned counsel appearing for the petitioner has reiterated his contention in the application namely that the documents relied upon by the respondents on the face of it confers no title to the respondent. It is further submitted that the observation of the trial court that the suit is filed under Section 6 of the Specific Relief Act, is unfounded as there is no averment in the plaint that the suit was filed under Section 6 of the said Act.

5. A perusal of the plaint shows that the petitioner seeks relief of decree of possession, decree of damages/mesne profits and decree of permanent injunction to restrain the respondents from creating any sort of third party interest in the suit property. A perusal of the plaint shows that the respondent claims to have bought the property vide documents like General Power of Attorney, Agreement to Sell, affidavit etc dated 13.1.2015. She further states to have received physical possession of the property, has obtained electricity connection in her name and has shifted in the property keeping up furniture and other articles. Thereafter she claims to have been dispossessed on 29.1.2016. A perusal of the plaint shows that it cannot be

said it does not disclose any cause of action in favour of the respondent. The rights of the respondent vis a vis what the petitioner would have to adjudicated upon in the suit. Merely because the respondent claims to have entered possession based on documents like agreement to sell etc. does not entitle the petitioner to dispossess the respondent. These are issues which would have to be gone into after trial. The observations of the trial court that the suit appears to have been filed under section 6 of the Specific Relief Act are tentative observations and do not bind the petitioner at the time of adjudication of the suit.

6. Given the nature of the pleadings in the plaint, there is no infirmity in the impugned order. Present petition is dismissed.

JAYANT NATH, J.

OCTOBER 05, 2016/v