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

+ C.R.P. 19/2017

RAM KUMAR

..... Petitioner

Through Mr.Sandeep Kumar and Mr.Sachin
Kumar, Advocates

versus

AJIT KUMAR & ORS

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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27.01.2017

CM No.3357/2017 (exemption)

Exemption allowed, subject to all just exceptions.

C.R.P. 19/2017 & CMNo.3356/2017 (stay)

1. By the present Revision Petition under section 115 of CPC the petitioner seeks to impugn the order dated 17.11.2016 by which an application moved under Order VII Rule 11 of the CPC filed by the petitioner was dismissed. The respondent Ajit Kumar has filed a suit for declaration, partition, possession and for permanent injunction. As per the petitioner he filed an application under Order VII Rule 11 CPC. The suit property is measuring 265 sq.yards and the value has been shown by the respondent as Rs.1,43,10,000/-. As the respondent/plaintiff is only seeking possession of 137 sq.yards he has valued the property at Rs.73,98,000/-. The case of the petitioner is that the property is 265 sq.yards and the same has to be valued on the whole.

2. Learned counsel appearing for the petitioner is unable to elaborate his

contention further as to how his submission would be relevant under the Court Fees Act.

3. I may look at the legal position. This Court in the case of *Sushma Tehlan Dalal vs. Shivraj Singh Tehlan & Ors. 2011 (123) DRJ 91* stated the legal position regarding Court Fees in a suit for partition after going through various judgments as follows:-

11. The following legal proposition of law emerges from the above-referred decisions:

(i) In order to ascertain whether the suit has been property valued for the purpose of Court fee or not, only the averments made in the plaint have to be seen, without reference to the plea taken by the Defendants;

(ii) If the plaintiff claims to be in joint possession of the suit property, he has to pay a fixed Court fee in terms of Article 17(vi) of Court-fees Act.

(iii) If the averments made in the plaint show that the plaintiff has been completely ousted from possession and is not in possession of any part of the suit property, he is required to claim possession and also pay ad valorem Court fee on the market value of his share in the suit property.

4. The plaint does not show that the petitioner has been ousted from the suit property. There are no reasons to interfere with the orders passed by the ARC.

5. Petition is dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

JANUARY 27, 2017

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