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

+ C.R.P. 26/2017 & CM Nos.4709-4710/2017

ANJU GUPTA Petitioner
Through Mr.S.P.Jha, Advocate

versus

NAMITA YADAV Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
08.02.2017

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CM No.4710/2017

Exemption allowed, subject to all just exceptions.

C.R.P. 26/2017 & CM No.4709/2017

1. By the present petition filed under section 115 of CPC the petitioner seeks to challenge the order dated 24.10.2016 whereby his application under Order VII Rule 11 CPC was dismissed.
2. The respondent has filed a suit for recovery of Rs.65,250/- being alleged arrears of rent and damages. It is contended that the tenanted period expired long back but the petitioner has failed to vacate and hand over vacant possession.
3. The submission of learned counsel appearing for the petitioner is that a landlord cannot file a suit against the tenant for recovery of rent/damages simplicitor. He has to also file a suit for recovery of possession. He relies

upon order 20 Rule 10 CPC and the judgment in *D.Nataraja Achari vs. Balambal Ammal*, AIR 1980 Madras 222.

4. Order 20 Rule 12 CPC reads as follows:-

“12. Decree for possession and mesne profits.- (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the court may pass a decree—

1. (a) for the possession of the property;
2. (b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;
3. (ba) for the mesne profits or directing an inquiry as to such mesne profits;
(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—
 - (i) the delivery of possession to the decree holder,
 - (ii) the relinquishment of possession by the judgment debtor with notice to the decree holder through the court, or
 - (iii) the expiration of three years from the date of the decree, whichever event first occurs.
- (2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.”

4. It may be noted that the aforesaid provision forms part of Order 20 which has a head “judgment and decree”. Further Order 20 Rule 12 CPC is dealing with a situation where a suit is for recovery of possession of immoveable property and for rent/mesne profit. The nature of decree to be passed in such a suit is culled out in the said provision. There is nothing in

the said provision which would bar a landlord from filing a suit against his tenant for recovery of unpaid rent or in case of expiry of the tenancy for payment of damages.

5. Even the judgment relied upon by the learned counsel for the petitioner in the case of *D.Nataraja Achari vs. Balambal Ammal (supra)* is misplaced. That judgment is only listing the difference between Order 20 Rule 12 CPC and Order 20 Rule 18 CPC. It notes that there are three different types of cases in which question of profit and mesne profit arises i.e. in a suit for ejectment, or recovery of possession of immoveable property from a person in possession without title and future mesne profits or a suit for partition by one or more tenants-in-common or a suit for partition by a member of joint Hindu Family. The judgment deals with type of case where question of profit and mesne profit arise. It does not state that a landlord is remediless for recovery of rent/mesne profits without seeking possession. The contention of the petitioner is without merits and the petition is dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

FEBRUARY 08, 2017

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