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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.334/2017 & CM No.11519/2017 (for stay).
KISHAN SINGH VERMA Petitioner
Through: Mr. R.K. Bachchan, Adv.
versus
ASHA RAM & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.07.2017**

CM No.11520/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The CM stands disposed of.

CM(M) No.334/2017 & CM No.11519/2017 (for stay).

3. This petition, under Article 227 of the Constitution of India, impugns the order dated 12th January, 2017 of the Court of Additional Senior Civil Judge/JSCC/G. Judge (East), Karkardoom Courts, Delhi in Suit No.7986/16 filed by the respondents no.1 to 8 namely Asha Ram, Naresh Kumar, Ajay Kumar, Sushila, Usha Rani, Suman and Sunita, Anjana, hereinafter collectively referred to as plaintiffs, against the respondent no.9 Ashok Kumar herein.

4. The counsel for the petitioner has been heard.

5. The counsel for the petitioner has argued (i) that the plaintiffs instituted the suit from which this petition arises impleading respondent no.9 Ashok Kumar only as the defendant thereto, for recovery of possession of immovable property from the said Ashok Kumar *inter alia* on the ground that the said Ashok Kumar was a tenant under the plaintiffs at a rent

of Rs.1,000/- per month but the Delhi Rent Control Act, 1958 was inapplicable to the property and that the tenancy of Ashok Kumar had been determined by the plaintiffs; a claim for arrears of rent and *mesne* profits was also made in the said suit; (ii) that a decree for possession has already been passed in favour of the plaintiffs and against Ashok Kumar in the said suit and which decree is under execution; (iii) however the suit, insofar as for recovery of arrears of rent and *mesne* profits, is pending consideration; (iv) that the petitioner claims that in fact he is the owner of the said immovable property and the petitioner has also filed a suit for recovery of possession against the plaintiff no.1 Asha Ram and Ashok Kumar and which is pending consideration in the Court of another Civil Judge, Delhi; (v) that the petitioner applied for impleadment in the suit aforesaid as well as filed objections under Section 47 of the Code of Civil Procedure, 1908 (CPC) in execution of the decree for possession; and, (vi) that the objections filed under Section 47 are still pending consideration.

6. Vide the impugned order, the application of the petitioner for impleadment in the suit has been dismissed *inter alia* reasoning that the suit as filed by the plaintiffs against Ashok Kumar is on the basis of landlord – tenant relationship and cannot be converted into a title suit between the plaintiffs on the one hand and the petitioner herein on the other hand and that the petitioner herein is free to take his own remedies. Reliance has been placed on ***J.J. Lal Pvt. Ltd. Vs. M.R. Murali*** AIR 2002 SC 1061.

7. I have enquired from the counsel for the petitioner as to need of the petitioner to be impleaded in the suit aforesaid which now survives only for the relief of recovery of arrears of rent and *mesne* profits.

8. The counsel for the petitioner has first drawn attention to the impugned order which records that the plaintiffs did not file any reply to the application of the petitioner for impleadment and gave their no objection thereto.

9. The counsel for the petitioner states that the plaintiffs having not opposed the impleadment of the petitioner, the Court of the Additional Senior Civil Judge erred in denying impleadment.

10. I am unable to agree.

11. The Courts are to decide the suits and regulate their proceedings in accordance with law and not at the asking of the parties. The learned Additional Senior Civil Judge has correctly observed that a simpliciter suit between landlord and tenant could not be converted into a title suit. Reliance in this regard can be placed on *Evangelical Church of India Vs. North India Outreach Society* 1997 (40) DRJ 250, *B.K. Dutta Vs. Smt. Nita Madan* AIR 1984 Cal. 228 and *Manju Gupta Vs. Daya Ram* 2017 SCC OnLine Del 7331.

12. The counsel for the petitioner has next argued that if the petitioner is not impleaded as a party to the suit, it may lead to some inconsistency.

13. I am unable to agree with the aforesaid also.

14. It is for the petitioner, to in his suit prove that he has title to the property and is entitled to recover possession from the plaintiffs. Even if plaintiffs in execution of the decree for possession recover possession from the aforesaid Ashok Kumar, the petitioner will not be bound by the said decree and can in his suit, if found entitled to, recover possession from the plaintiffs. Not only so, the petitioner, in his suit can seek any other order qua

his entitlement to *mesne* profits or interim order qua possession also, if entitled thereto.

15. Thus no ground for interference is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 17, 2017
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