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

+ CM(M) 534/2015

SURENDER KUMAR

..... Petitioner

Through: Mr.Sameer Nandwani, Advocate.

versus

MANOJ & ANR

..... Respondents

Through: Mr.Rakesh Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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11.05.2017

1. This instant petition under Article 227 of the Constitution of India has been filed by the petitioner/plaintiff impugning the order dated 13th March, 2015 whereby the application filed by him under Order XII Rule 6 of Code of Civil Procedure, for passing a decree of permanent and mandatory injunction and mesne profit, has been dismissed by the learned Trial Court.
2. The Civil Suit No.84/2014 was filed by the petitioner/plaintiff claiming himself to be owner of Property No.A-4/56, Nand Nagri, Mandoli, Samboli, New Delhi impleading his sons as defendants.
3. After the written statement was filed by the respondents/defendants, the petitioner/plaintiff filed the application under Order XII Rule 6 CPC with the prayer for passing a decree of mandatory injunction on the basis of admission made by the defendants in the written statement.
4. The learned Trial Court, after hearing learned counsel for the parties, passed the impugned order rejecting the prayer of the petitioner mainly on

the ground that the averments made in the plaint are required to be adjudicated through the process of trial.

5. The reasons given by the learned Trial Court for declining the prayer are as under:-

(i) The plea of the defendants is that there was no admission on their part in the written statement and the application has been filed malafide to harass them.

(ii) It is inappropriate to permit a party to invoke Order XII Rule 6 of Code of Civil Procedure where vexed questions of facts and law arise.

(iii) The remedy contemplated under Order XII Rule 6 CPC is discretionary and not mandatory.

(iv) The defendants have raised number of triable issues which cannot be adjudicated at the preliminary stage unless the parties lead evidence.

(v) Even if there is admission of a fact, the Court may still require the plaintiff to prove the facts which have been admitted by the defendants.

6. The learned Trial Court has relied upon Parivar Seva Sansthan vs. Dr.(Mrs.) Veena Kalra & Ors. AIR 2000 Delhi and the decisions of High Court of Delhi reported as AIR 2007 Delhi 166 and 133 (2006) DLT 260 before arriving at the conclusion that the matter required adjudication.

7. It is well settled that the scope of power of this Court under Article 227 of the Constitution is not in the nature of appellate jurisdiction. The extent and scope of power with this Court is limited and restrictive in nature, and in the normal circumstance, it is exercised where there is want of jurisdiction, error of law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits of their jurisdiction and authority and it is not to act as an Appellate Court for

correcting the decisions of the subordinate courts. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity.

8. In the order impugned in the absence of there being any material illegality or perversity, the order of the court below cannot be faulted with so as to require interference by this court in its supervisory power under Article 227.

9. The petition is dismissed.

PRATIBHA RANI, J.

MAY 11, 2017

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