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

+ CM(M) 613/2017

VIJAY SINGH @ VIJENDER SINGH Petitioner
Through: Mr.L.B.Rai & Mr.Mohit Sharma,
Advocates

versus

JAMSHED ALI & ORS. Respondents
Through: Mr.G.D.Mishra, Advocate for
EDMC/R-2
Mr.Naushad Ahmed Khan, ASC
(Civil), GNCTD with Mr. Manzar
Anis, Advocate for R-3

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
% **26.05.2017**

CM No.20603/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 613/2017

1. The petitioner has invoked the extraordinary jurisdiction of this Court vested under Article 227 of the Constitution of India with a prayer that the order impugned dated 11th April, 2017 may be set aside.
2. The petitioner had filed an application under Order XIV Rule 5 CPC before the learned Trial Court with a prayer to settle additional issues as well to get the suit property demarcated from the Revenue Authorities of Tehsil,

Seelampur at the expense of the petitioner/plaintiff in view of the controversy raised by the respondent/defendant as to in which khasra number it falls.

3. Mr.L.B.Rai, learned counsel for the petitioner has submitted that the Civil Suit No.167/16 was filed by the petitioner/plaintiff against the respondents/defendants pleading respondent No.1/defendant No.1 to be his tenant in respect of the suit property situated at Khasra No. 187 of Village Ghonda, Gujran Khadar. In the written statement filed by the respondent No.1/defendant No.1 he claimed himself to be the owner of the suit property which is situated in Khasra No.85, 86 and 87 of the Village Gamri. Mr.L.B.Rai, learned counsel for the petitioner has submitted that unless the issues in respect of the suit property is re-framed or additional issues is framed and the khasra no. in which the suit property falls, is not determined by directing the revenue authorities to carry on demarcation, the matter in issue cannot be fully adjudicated. Thus, he has prayed that the impugned order may be set aside and learned Trial Court may be directed for framing additional issues and also get the demarcation done.

4. Issues were settled by the learned Trial Court on 26th May, 2016 and thereafter even the petitioner/plaintiff has also been examined. Thereafter the application under Order XIV Rule 5 CPC was filed for reframing the issues regarding the location of the property as to whether it is situated in Khasra No. 187 of Village Ghonda, Gujran Khadar or in Khasra No.85, 86 and 87 of the Village Gamri as well for issuance of the direction to the Revenue Authorities for conducting the demarcation in respect of the suit property to ascertain the khasra number in which the suit property is situated.

5. Vide impugned order the application stands dismissed for the following reasons:-

“No doubt there is a dispute between the parties about the exact Khasra number but there is no dispute regarding identity of the property. It is for the parties to lead evidence and to show in which exact Khasra number, property is situated and in case of a need, they can examine the revenue officials also to prove the land record and to get the property demarcated, if need arises but at this stage, there exists no ground to reframe the issue or to frame any additional issue as prayed for when there is no dispute regarding the identity because plaintiff is describing that the suit property is in possession of the defendant as a tenant in respect of part of the property and as an unauthorized occupant in respect of the another part whereas defendant is claiming its ownership. Plaintiff himself is sure regarding location, situation and identity of the property allegedly belonging to him and it becomes immaterial fact at this stage whether it is falling within a particular khasra number or another. I find no ground to allow this application and there is no requirement to demarcate the property from any revenue official at this stage. Same is hereby dismissed with costs of ₹1,000/- payable by the plaintiff to the defendant No.1.

Put up this matter on 21.08.2016 for remaining PE.”

6. The petitioner has placed on record copy of the plaint in civil suit No.167/16 as Annexure P-4. The averments made in para Nos.3, 5 and 7 of the plaint are with reference to the suit property including the averments about the title of the petitioner, its location as well the relationship of landlord and tenant between the parties. The relevant paras are extracted hereunder:-

“3. That the plaintiff is owner of plot/property measuring 135 Sq.Yds out of Khasra no.187 of Village Ghonda Gujran Khaddar, Delhi which is situated and known as H.No.A-100 Gali No.21 Abadi Som Bazar Gamri Ext. Ghonda Delhi-110053. Regarding ownership of Khasra No.187 of Village

Ghonda Gujran Khaddar, Delhi-53 of plaintiff, the fard of Khasra No.187 is attached herewith for your kind perusal to this Hon'ble Court.

5. That after completing the construction work over the above said property the plaintiff has let out his property mentioned above measuring 60 Sq. Yds. built up on ground and first floor out of 100 sq. yds. to the above named defendant Jamshed Ali on rent of ₹ 1,000/- per months excluding other charges on dated 01.01.2006 and the tenanted portion of the property in question has been shown green in the site plan attached herewith for kind perusal to this Hon'ble Court since then the defendant Jamshed Ali is residing with his family members in part portion of H.No.A-100, Gali No.21, South Gamri Ext. Ghonda, Delhi-110053 measuring 60 sq. yds. built up ground and first floor as tenant under the plaintiff, the tenanted portion has been shown green in the site plan.

7. That the plaintiff is receiving rent from the above named defendant No.1 and his family members since 01.01.2006 and the plaintiff has received rent from the defendant No.1 upto December, 2013 and since then 01.01.2014 the defendant No.1 is not paying rent to the plaintiff after hearing repeated request and demands of the plaintiff.”

7. The prayer clause of the plaint is to the effect that the relief of possession be granted in favour of the plaintiff and against the defendant No.1 with his family members by way of handing over the peaceful and physical possession of the suit property bearing No.A-100, Gali No.21, Abadi Som Bazar Gamri Ext. Ghonda Delhi-110053 situated in Khasra No.187 of Village Ghonda Gujran Khadar, Delhi-110053, measuring 40 sq. yds. as shown red in the site plan.

8. Since the civil suit filed by the petitioner/plaintiff is based on his claim as owner in respect of suit property and pleading the respondent No.1/defendant No.1 to be his tenant in respect of the property as shown 'red' in the site plan annexed with the plaint, determination of Khasra No. is

not required in this litigation between the landlord and tenant as the identity of suit property is not in dispute or in issue.

9. The real dispute is whether the defendant was inducted as a tenant in respect of the suit property by the plaintiff or he is in possession of the same as owner as pleaded in the written statement. Thus, learned Trial Court has rightly dismissed the application.

10. The order impugned here does not suffer from any illegality or perversity so as to require any interference by this Court under Article 227 of the Constitution of India.

11. The petition is dismissed.

PRATIBHA RANI, J.

MAY 26, 2017

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