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

+ C.R.P. 145/2017

ARUN KUMAR

..... Petitioner

Through: Mr. Sumit Raajput, Adv.

Versus

SANT LAL ARORA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.07.2017

CM No.23453/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

C.R.P. 145/2017 & CM No.23454/2017 (for stay)

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order dated 12th April, 2017 of the Additional Senior Civil Judge of dismissal of an application of the petitioner/plaintiff under Order XII Rule 6 of the CPC.

4. The petitioner/plaintiff instituted the suit from which this petition arises for recovery of possession of land claimed to have been let out to the respondent/defendant vide lease deeds dated 18th December, 1967 and 26th August, 1970. It is *inter alia* the plea of the petitioner/plaintiff that though the rent was below Rs.3,500/- per month (in reference to Section 2(c) of the Delhi Rent Control Act, 1958) but since the letting was of land, the provisions of the Delhi Rent Control Act were not applicable and the Civil Court had jurisdiction to entertain the suit for ejectment of an erstwhile tenant after determination of tenancy.

5. The learned Additional Senior Civil Judge, in a well reasoned order, has held that on a perusal of the terms of the two lease deeds relied upon by the petitioner/plaintiff himself, it was not very clear whether the letting was of open land or there was construction existing on the land on the date of letting.

6. Needless to state that if the letting was not of vacant land but construction existed, the provisions of the Delhi Rent Control Act would apply.

7. The counsel for the petitioner/plaintiff has argued that the respondent/defendant had taken a plea of adverse possession and which has been negatived by this Court in order dated 3rd October, 2016 in C.R.P. No.150/2016 arising from the suit. It is thus contended that the suit should have been decreed forthwith.

8. Merely because one of the pleas of the respondent/defendant has been so negatived would not entitle the petitioner/plaintiff to a decree, by ignoring other pleas. Moreover, it is the duty of the Court to ensure that a decree, jurisdiction to pass which in certain facts is barred, is not passed.

9. The lease deed dated 18th December, 1967, in which petitioner/plaintiff is described as First Party and respondent/defendant as Second Party in Clauses 1, 2, 3 & 9 thereof provided as under:

“1. The First party is owner of land admeasuring 75 sq. yds. out of Khasra No.303, situated in the area of Khampur, Delhi and butted and bounded as under:- in the abadi of Shadi Khampur.

North: Gali

South: House of Shri Sobha Singh S/o Sh. Sarmukh Singh

East: Remaining portion of House No.2263

West: House of Shri S.s. Nagpal S/o Sh. Tehla Ram.

2. *The Second party has purchased one house No.2263, built on portion of aforesaid land admeasuring 75 sq. yds. the land belonging to the First party.*

3. *The first party has agreed to give on lease to the Second party the aforesaid land admeasuring 75 sq. yds. for a sum of Rs.28.56 being the annual lease for a period of lease commencing from 5th January, 1967 to 22nd May, 1970.*

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9. *After the expiry of the above mentioned lease, the first party will be bound to enter into fresh contract of lease with the consent of the Second party and if there will be any dispute for the renewal of the lease, the first party will pay the market price of the structure, built thereon, to the Second party and will eject the Second party.”*

10. The lease deed dated 26th August, 1970, in clause 2&10 thereof provided as under:

“2. That the charge of the lease money will be on the structure of the said area and other property moveable and immoveable of the 2nd party.

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10. The possession of the above mentioned property is occupied by the 2nd party bearing Municipal No.XVII/2263.”

11. I have enquired from the counsel for the petitioner/plaintiff as to what is the position in law, when land is owned by one person and built up structure thereon owned by another and the land is let out to the owner of the structure i.e. whether the lease would remain of the land or owing to the existing superstructure owned by the other, would cease to be a lease of land.

12. The counsel for the petitioner/plaintiff is not prepared with the case law on this aspect. He however states that Clause 2 of the lease deed dated 18th December, 1967 has a typographical error. However inspite of repeated asking, as to what is the typographical error and what was intended to be written, nothing is forthcoming. Needless to state that there is no plea in the plaint or in the replication to the said effect.

13. In view of the aforesaid, this is not a fit case for grant of decree on admissions as sought and the learned Additional Senior Civil Judge has correctly exercised the jurisdiction vested in him.

14. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 10, 2017

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