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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 158/2017

OM PRAKASH PARIHAR Petitioner

Through: Mr. Satish Kumar Sharma, Adv.

Versus

CHARAT SINGH & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.07.2017**

CM No.25345/2017 (for exemption)

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

C.R.P. 158/2017 & CM No.25344/2017 (for stay)

3. This petition under Section 115 of the CPC impugns the order (dated 31st March, 2017 in Civil Suit No.105262/2015 of the Court of Judge Small Cause Court (JSCC)/ Additional Senior Civil Judge (ASCJ) North-East, Karkardooma Courts, Delhi) *inter alia* of dismissal of the application of the petitioner / defendant No.3 under Order VII Rule 11 of the CPC.
4. The impugned order records i) that the respondent no.1 / plaintiff has instituted the suit from which this petition arises for permanent injunction to restrain the petitioner / defendant no.3 and other respondents in this petition from dispossessing the respondent no.1 / plaintiff from plot of land ad-measuring 285 sq. yds. in Khasra No.24/14 situated at village Karawal Nagar in the abadi of Gali No.5, G-Block, Pusta Road, West Karawal Nagar,

Shahdara, Delhi; ii) that the respondent no.1 / plaintiff claims to have purchased the said property from the petitioner / defendant no.3; iii) that the dispute in the suit was regarding the identification of khasra number of the property; iv) that vide orders in the suit (when it was pending in this Court), a surveyor was appointed to submit a report of the khasra number of the disputed land and report had been filed to the effect that the said plot falls in Khasra No.24/14; v) that the plea of the petitioner / defendant no.3 was that the said report was in connivance with the respondent no.1 / plaintiff; vi) it was the plea of the petitioner / defendant no.3 that the land falls in Khasra No.24/7/1; vii) that the dispute thus in the suit was, in which khasra number the land falls; and, viii) that the said question could only be decided during trial and the plaint could not be rejected under Order VII Rule 11 of the CPC.

5. The counsel for the petitioner / defendant no.3 however before this Court has argued that the suit filed by the respondent no.1/ plaintiff for mere injunction was not maintainable because the respondent no.1 / plaintiff is not in possession of the property and it is the petitioner / defendant no.3 who is in possession of the property.

6. The respondent no.1 / plaintiff in para 1 of the plaint in the suit has claimed to be the owner in possession of the property.

7. I have repeatedly asked the counsel for the petitioner / defendant no.3 to show the plea in his written statement of the petitioner / defendant no.3 being in possession of the land.

8. Though the counsel for the petitioner / defendant no.3 has been unable to show any categorical plea to the said effect but even if there were to be

such a plea, I have enquired from the counsel for the petitioner / defendant no.3 how can such question, i.e. whether it is the respondent no.1 / plaintiff who is in possession or it is the petitioner / defendant no.3 who is in possession, be decided under Order VII Rule 11 of the CPC.

9. No plausible answer has been forthcoming.

10. On enquiry, whether issues have been framed, though the answer is in the affirmative but the copy of the order framing issues has not been filed.

11. On the only submission urged before this Court, no ground for rejection of the plaint under Order VII Rule 11 of the CPC is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 21, 2017

‘gsr’..