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

+ C.R.P. 187/2015 & CM Nos.29668/2015 & 41536/2016

BABU LAL Petitioner
Through Mr.S.Sasi Bhushan and Ms.Rimpi
Garg, Advocates

versus

DEEP CHAND & ANR Respondents
Through None for R-1
Mr.Roshan Lal Goel, Advocate for
R-2/SDMC

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **08.02.2017**

None has appeared for respondent No.1 despite service. The petitioner seeks to challenge the order dated 23.10.2015 by which the application under Order 7 Rule 11 CPC was dismissed.

The respondent has filed a suit for permanent and mandatory injunction. He states that the parties are joint owners of a property in Chirag Delhi which was owned by the father of the parties. It is claimed that the petitioner has without permission and knowledge of the respondent demolished the old construction and has made a collaboration agreement with some builder and started construction on the suit property. Hence, the respondent sought a decree of permanent injunction restraining the petitioner from carrying out any illegal and unauthorised construction and a mandatory injunction was also sought directing the petitioner to remove the building material.

Learned counsel appearing for the petitioner submits that as noted by this court in order dated 7.12.2015 a suit for injunction by a co-owner does not lie against another co-owner where the first co-owner has been ousted from the property and is not in possession. The first co-owner has to also seek partition. However, he submits that he would be satisfied in case he may be permitted to construct the property subject to the direction that in case a decree is passed in favour of the respondent the petitioner would at his own cost take corrective steps to restore the suit property. The petitioner also states that after construction the petitioner would be residing in the property and would not sell or alienate the suit property during pendency of the suit.

In view of the above statement of the petitioner and permitting the petitioner to carry on construction subject to the terms and conditions stated herein, the present petition is disposed of. All pending applications, if any, also stand disposed of.

Needless to add that any construction carried out shall be as per law.

JAYANT NATH, J

FEBRUARY 08, 2017

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