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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 2nd April, 2018

+ CM (M) 483/2016

CHARU VERMA Petitioner

Through: Mr. Vipin Kr. Singh, Adv.

versus

JITENDRA VERMA & ANR. Respondents

Through: Mr. Varun Bhati & Ms. Rhea
Gandhi, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the plaintiff of the civil suit (CS 117/2014) which is pending before the Additional District Judge, the respondents herein being the defendants, the prayer being for decree for possession and recovery of damages qua the premises described as shop no. A-3, Sanatan Dharam Mandir (Saat Manjila), Tilak Nagar, New Delhi – 110018 as shown in red colour in the site plan (page 26 of the paper book). The site plan would show that the shop comprises of two portions each with dimensions of 10 feet x 20 feet one at the ground floor and the other at the first floor. The petitioner (plaintiff of the case) is the wife of the first respondent (first defendant of the case), the second respondent (second defendant in the case) being a company in which both claim to be Directors. It is the case of the petitioner that

she had taken over the premises in question as a tenant but after the marital relationship between the parties ran into rough weather, she was illegally ousted from its use or enjoyment. The suit is being contested by the first respondent on the ground tenancy was taken over by him after paying huge amount, he having paid the rent regularly. The defendant would concede in the pleadings that there are some rent receipts of the shop reflecting payment of rent by the plaintiff unto the landlord but it is his case that the plaintiff had created false and frivolous evidence in order to grab the shop, deprive him of its use, he having never surrendered the tenancy rights.

2. Against the above backdrop, the petitioner had moved an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) seeking a decree of possession of half portion of the premises in question on the ground that there was an admission by the defendant as to the joint tenancy. The said application was dismissed by the Additional District Judge by order dated 01.03.2016 which is under challenge through the petition at hand.

3. While rejecting the prayer for decree under Order XII Rule 6 CPC, the Additional District Judge has noted in the impugned order that the plaintiff has not impleaded the landlord of the premises as a party. The documents on record seem to indicate a legal notice has been served on the first defendant, there being no explanation as to why no such notice was served on the second defendant, a company which was permitted to carry on business from the said premises. The

trial judge also noted that the averments in the plaint lack clarity with regard to the particulars of the premises which had been taken on rent.

4. Be that as it may, in the considered view of this Court, against the above backdrop, there is no case made out for part decree to be granted respecting the relief of possession that too by dividing the tenancy between the plaintiff and the first defendant, particularly in absence of the landlord from the proceedings at the stage when such relief was sought. The pleadings of the first defendant that the premises had been taken by him on rent and that the rent receipts had been procured by the plaintiff cannot be short-shrifted. He would need an opportunity to prove his case by evidence. There is no clear or unequivocal admission on which a decree under Order XII Rule 6 CPC can be granted.

5. The petition is, thus, devoid of substance. It is dismissed.

R.K.GAUBA, J.

APRIL02, 2018

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