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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 389/2017 & CM No. 13731/2017(exemption) & CM No.
13730/2017(stay)

KESHAR KALI

..... Petitioner

Through: Mr. Abhimanyu Singh, Advocate.

versus

RAJESH KUMAR & ANR

..... Respondents

Through: Mr. Rajneesh Kumar Shukla,
Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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28.02.2018

The petitioner is the plaintiff of the Civil Suit (No. 60434/2016) instituted against the respondents for the reliefs of mandatory injunction to the effect that the said respondents/defendants be directed to vacate the suit premises described as House No. R-24, admeasuring 50 sq. yards out of total land measuring 100 sq. yards out of Khasra no. 53/8, situated in the area of Village Karala, Delhi, now the abadi known as Rajiv Nagar Extn. (Near Village Begum Pur), Delhi and for recovery of *mesne* profits.

The respondents/defendants are son and daughter-in-law respectively of the petitioners/plaintiffs. The suit is being contested
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only by the second respondent/defendant i.e. daughter-in-law, the other respondents/defendants having chosen to suffer the proceedings *ex-parte*.

In the written statement of the daughter-in-law while not disputing that the property in question stands in the name of the plaintiff, it has been claimed that it was purchased by the joint funds of the father-in-law (i.e. husband of the plaintiff) and of the first defendant (husband of the contesting defendant) and further that the house in question is “a share household” in her relation.

The plaintiff had moved an application under Order 12 Rule 6 of the Code of Civil Procedure, 1908, seeking a decree to be passed on the basis of admissions, the contention raised being that the plea of the property being *benami* or it being shared household of the contesting defendants could not be valid defences.

The Civil Judge, by the order dated 31.01.2017, has dismissed the application under Order 12 Rule 6 CPC observing cryptically that the plea as to whether the property is *benami* “*is maintainable in law or not is a different question*” and that it would need to be seen “*whether the suit property is a shared household or not*”, without making any serious attempt to address either of the two questions which, in the given facts and circumstances, appear to be questions of law.

In the above view, where the application under Order 12 Rule 6 CPC has not properly addressed by the trial court, the issues having being more or less short-shrived, the appropriate course would be to

remit the matter and direct the Civil Judge to consider the said questions at length in the light of the law cited at bar and decide the prayer in the application under Order 12 Rule 6 CPC afresh.

For clarity, it may be added that though the application under Order 12 Rule 6 CPC does not explicitly say so, the prayer for judgment of admission is restricted to the prayer in the suit for mandatory injunction and not for *mesne* profits.

Ordered accordingly. The impugned order consequently stands set aside and the matter is remitted.

The petition and the application filed therewith stand disposed of.

R.K.GAUBA, J.

FEBRUARY 28, 2018

uj

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