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

+ CM(M) 523/2015 and CM APPL.10117/2015

SHRI KASHMIRI LAL Petitioner

Through: Mr. S.D. Ansari, Advocate with
Mr. I. Ahmed, Adv.

versus

MOHD KASHSIF & ORS. Respondents

Through: Mr. Javed Ahmed, Advocate with
Ms. Syed Maria Aijaz, Adv. with
Mr. Anis Ahmed, Adv.
Mr. Abhinav Thareja, Adv. with
Mr. Hashmat Nabi, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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02.05.2018

The petitioner is the first defendant in the civil suit (CS No.381/2014) which was instituted by the first respondent (the plaintiff) on 05.09.2014 on the file of which the impugned order dismissing the application of the petitioner (the defendant) under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) was passed on 12.03.2015 by the additional senior civil judge. The suit, it may be noted, is based on cause of action claimed by the first respondent (the plaintiff) to the effect that the petitioner (the prime defendant) had indulged in unauthorized construction in property No.7271, Aram Nagar, Paharganj, New Delhi, the prayer made in the suit being for injunction – mandatory to have the alleged illegal and unauthorized construction demolished and prohibitory to restrain the petitioner from carrying out any such illegal and unauthorized construction hereafter. The plaintiff of the suit claims to be the owner in possession of adjoining property No.7270, his grouse being that the alleged unauthorized

construction has resulted in his property being damaged.

It appears that in the plaint it is alleged that the property in use and occupation of the petitioner is wakf property. The written statement filed by the petitioner appears to contain some inherent contradictory averments with regard to ownership of the property as to whether it vests in wakf board or not. Be that as it may, going by the preliminary objections taken, it appears the petitioner claims to be the owner of the property on account of his continued use and occupation since 1947.

Reliance is placed on Sections 7 and 85 of the Wakf Act, 1995 to contend that the civil court does not have the jurisdiction to deal with the case. It is the submission of the petitioner that since according to the plaintiff of the case the subject-matter is wakf property, the jurisdiction of the civil court is ousted and the matter could have been brought only before the wakf tribunal. This contention has been rejected by the trial court by the impugned order and, in the opinion of this court, rightly so.

The suit is for relief of injunction, the cause of action claimed having arisen on account of alleged unauthorized construction in the subject property. It is not a suit between the petitioner and the wakf board as to the title to the property. When the petitioner, as per his oral submissions at the hearing, himself questions the averment of the plaintiff of the case that it is a wakf property, it does not lie in his mouth to turn around and seek rejection of the plaint on such submissions. The petition is devoid of substance and is dismissed.

The pending application also stands disposed of.

R.K.GAUBA, J.

MAY 02, 2018/vk