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

+ **RSA 289/2015**

ROHTAS SINGH Appellant
Through: Mr. V. P. Rana and Mr. Prem Garg,
Advocates.

Versus

AVADH BEHARI VERMA Respondent
Through: Mr. Vikrant Niles Goyal, Mr. Ajit
Singh and Ms. Sakshi Kakkad,
Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **ORDER**
22.03.2018

The second appeal challenges the order of the Trial Court as well as of the First Appellate Court, which dismissed the suit for declaration and permanent injunction against the respondent. It is the appellant's case that he is the owner of the suit property bearing plot no. 53, measuring 366 sq. yards in *Khasra* no. 66/9, New Krishan Vihar, Village Pooth Kalan, Delhi. However, his documents of title, as may be, mentioned *khasra* no. 66/4. Therefore, his suit for declaration was dismissed. The learned counsel for the appellant/plaintiff submits that the suit for permanent injunction would nevertheless lie against the respondent because he is in constructive possession of the suit property, which in reality forms part of *Khasra* no. 66/9, through his tenant Ms. Shanti Devi, who had so deposed before the Trial Court as PW5.

It is not in dispute that Ms. Shanti Devi is actually in possession of the suit property. Insofar as Ms. Shanti Devi has deposed that she is the tenant of the appellant (plaintiff), she can be removed from the suit property only by due process of law.

The learned counsel for the appellant submits that the respondents have indeed filed a suit bearing C.S. No. 61534/2016 for possession of the suit property from Ms. Shanti Devi, which is pending adjudication. Ms. Shanti Devi has admitted being a tenant of the appellant. The learned counsel for the respondent states upon instructions from the respondent who is present in the Court, that Ms. Shanti Devi will not be dispossessed from the suit property except as decided by the Court in the aforementioned suit.

Mr. Rana, the learned counsel for the appellant states that the appellant has moved an application for his impleadment in C.S. No. 61534/2016 and will contest the factum of Ms. Shanti Devi being his tenant and his being in constructive possession of the suit property.

In view of the above, the impugned order is modified to the extent of the fair stand of the respondent, that Ms. Shanti Devi will be dispossessed from the suit property only as per process of law. The appeal is disposed off accordingly.

NAJMI WAZIRI, J.

MARCH 22, 2018

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