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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1517/2018
RAYMOND LAL PATRAS & ORS Petitioners
Through : Mr.Pankaj Vivek, Advocate

versus

THE CHURCH OF REDEMPTION & ANR Respondents
Through : Mr.Anoop George Chaudhari and
Ms.June Chaudhari, Sr. Advocates
with Ms.Sumeeta Chaudhari and
Mr.Ashish Chaudhari, Advocates

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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11.12.2018

CAV No.1154/2018

Counsel as above appears for the respondents/caveator.

The caveat is discharged.

CM Appl.No. 51940/2018

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 1517/2018, CM Appl.No. 51939/2018

1. This petition challenges the impugned order dated 22.09.2018 passed in CS No.56502/2016 in '*The Church of Redemption & Anr. vs. Raymond Lal Patras & Ors.*' pending before the learned Trial Court whereby an application under Order VI Rule 17 Civil Procedure Code (CPC) filed by petitioner was dismissed.

2. The respondent initially filed the civil suit for mandatory injunction and for damages but later by amendment the respondent

withdrew the prayer qua damages and restricted its relief only to the extent of mandatory injunction. The learned counsel for the petitioner alleges that not only in his initial written statement, but also in the amended written statement filed to the amended plaint, he has challenged the ownership of the respondent Church and its competency to file a suit and hence their application under Order VI Rule 17 CPC which only explains their defence which they had already taken in their written statements qua the ownership of the respondents ought to have been allowed by the learned Trial Court.

3. In their initial written statement, filed on 26.09.2015, the petitioner admitted the service of Hira Lal in the Church of Redemption at 1, North Avenue, New Delhi though he gave an evasive denial as to if the suit premises was ever allotted to Hira Lal and stated the respondents have no right, authority, or title whatsoever in the suit premises. It is the case of the petitioner that Delhi Diocesan Trust Association is the owner of the subject property as disclosed in its financial statement / schedule of land and building filed at page No.717 of the paperbook.

4. On record there is an admission in written statement that Hira Lal was appointed by the respondent No.1 and was given a servant quarter. It is also not denied that defendant No.1 too was employed in the year 1972-73 by the respondent No.1 and thus remained in possession of the suit premises even after he has left the services of the church. Admittedly, the petitioner is enjoying free water, electricity having installed two air conditioners etc. The petitioners

have not denied these facts in their pleadings. Rather in the written statement, the petitioners have denied the respondents have no right to demand for electricity and water charges hence in a way they admit the respondents are paying the water / electricity charges for the electricity consumed by them. The stand of the petitioners is though they are residing in the premises/servant quarter, but do not know how they got into the premises and they do not know to whom they should pay rent/licence fees/water/electricity charges etc.

5. In *Maria Margarida Sequeria Fernandes and Others vs Erasmo Jack de Sequeria(Dead) through L.Rs.* (2012) 5 SCC 370 it was noted:-

“64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the Courts.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

97. This Court in Puran Singh v. The State of Punjab (1975) 4 SCC 518 held that an occupation of the property by a person as an agent or a servant at the instance of the owner will not amount to actual physical possession.”

6. Thus, in the facts and circumstances, the learned Trial Court was right in holding the Court is not required to go into the depth,

primarily, per Section 116 of the Indian Evidence Act, 1872 which preclude any challenge in respect of the title on behalf of a licensee, particularly, when he is brought into the possession of any immovable property, pursuant to a license from the person who was in possession thereof. In this case, the respondent No.1 who put in possession by respondent No.1 as was in its service and hence the argument of the licensee challenging the title of the person who gave the possession needs to be excluded from the zone of consideration.

7. The learned Trial Court has also rightly held that challenging the ownership by allowing amendment would mean allowing the defendant to make a complete summersault from its evasive replies in the written statement earlier filed, hence, the amendment sought since would not assist in determining the real controversy between the parties was rightly dismissed by the learned Trial Court.

8. Consequently, no interference is also required qua the dismissal of the applications under Order VIII Rule 1A, Section 151 CPC by the impugned order.

9. The petition has no merits and is accordingly dismissed. The pending application is also disposed of.

YOGESH KHANNA, J.

DECEMBER 11, 2018

M/VLD